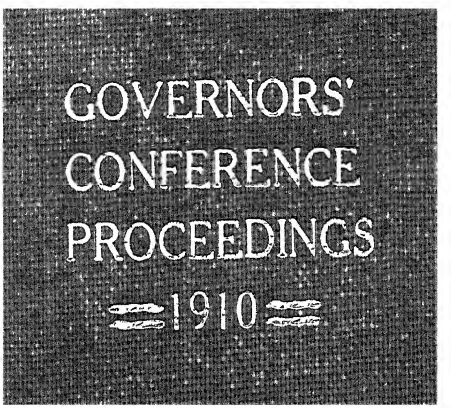
GOVERNORS'
CONFERENCE
PROCEEDINGS
1910

PROCEEDINGS

OF THE

SECOND

MEETING OF THE GOVERNORS

OF THE

STATES OF THE UNION

HELD AT WASHINGTON, D. C.

JANUARY 18, 19, 20, 1910

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SECOND MEETING OF THE GOVERNORS OF THE STATES OF THE UNION.

Held at Washington, D. C.,
January 18, 19 and 20, 1910.

Governors attending Conference:—

Honorable Braxton B. Comer of Alabama
Honorable Richard E. Sloan of Arizona
Honorable John F. Shafroth of Colorado
Honorable Frank D. Weeks of Connecticut
Honorable Simeon S. Penniwill of Delaware
Honorable Joseph H. Brown of Georgia
Honorable James H. Brady of Idaho
Honorable Beryl F. Carroll of Iowa
Honorable Walter R. Stubbs of Kansas
Honorable Augustus E. Willson of Kentucky
Honorable Bert M. Fernald of Maine
Honorable Eben S. Draper of Massachusetts
Honorable Adolph O. Eberhardt of Minnesota
Honorable Herbert S. Hadley of Missouri
Honorable Edwin Norris of Montana
Honorable Aston C. Shallenberger of Nebraska
Honorable Henry B. Quinby of New Hampshire
Honorable John Franklin Fort of New Jersey
Honorable George Curry of New Mexico
Honorable Charles Evans Hughes of New York
Honorable William W. Kitchen of North Carolina
Honorable John Burke of North Dakota
Honorable Judson Harmon of Ohio
Honorable Aram J. Pothier of Rhode Island
Honorable Martin F. Ansel of South Carolina
Honorable Robert S. Vessey of South Dakota
Honorable William Spry of Utah
Honorable George H. Prouty of Vermont
Honorable William E. Glasscock of West Virginia
Honorable James O. Davidson of Wisconsin
Honorable Bryant B. Brooks of Wyoming

MEETING OF GOVERNORS.

New Willard Hotel, Washington, D. C.,
Tuesday, January 18, 1910, 11 a. m.

The meeting was called to order by Governor Augustus E. Willson, of Kentucky, at 11 o'clock a. m.

The following Governors were present:

Governor Penniwill of Delaware
Governor Brown of Georgia
Governor Willson of Kentucky
Governor Draper of Massachusetts
Governor Shallenberger of Nebraska
Governor Quinby of New Hampshlre
Governor Fort of New Jersey
Governor Kitchen of North Carolina
Governor Harmon of Ohio
Governor Pothier of Rhode Island
Governor Ansel of South Carolina
Governor Prouty of Vermont
Governor Davidson of Wisconsin
Governor Comer of Alabama
Governor Shafroth of Colorado
Governor Weeks of Connecticut
Governor Brady of Idaho
Governor Carroll of Iowa
Governor Fernald of Maine
Governor Eberhardt of Minnesota
Governor Hadley of Missouri
Governor Hughes of New York
Governor Norris of Montana
Governor Burke of North Dakota
Governor Vessey of South Dakota
Governor Glasscock of West Virginia
Governor Brooks of Wyoming
Governor Sloan of Arizona
Governor Spry of Utah

Governor Willson made a statement to the meeting in reference to the objects of the call sent out for this conference and read from the proceedings of the conference of Governors held at the White House in 1908, showing that at that meeting suggestions were made by a number of Governors that future conferences of the Governors of all the states should be held.

Upon motion of Governor Burke of North Dakota, seconded by Governor Ansel of South Carolina, Governor Willson of Kentucky was elected temporary chairman of the meeting.

Upon motion of Governor Norris of Montana, seconded by Governor Shafroth of Colorado, Governor Sloan of Arizona was elected temporary secretary of the meeting.

Governor Sloan thanked the Governors for his selection as temporary secretary.

The Temporary Chairman.—The Temporary Chairman is not going to inflict an address on you.

This meeting has no legal authority whatever, as we all realize. It is not a house of Governors. It is simply a conference of Governors. I, for one, shied at the suggestion of "House of Governors." It sounded too much like the House of Lords. This body assumes nothing to itself, but meets for the common interest of our people and for the common pleasure of the Governors. The first meeting, held at the White House, I am sure is remembered with very great pleasure by every man who took part in it. I don't know that I have ever been present at a meeting that I thought was so entirely admirable and enjoyable, that was a public meeting, as that meeting at the White House, and I think every one of those who were there felt the same way about it.

This meeting has a chance to do very great good—and yet, at each meeting we shall not set a standard that there must be some epoch-making event at every Governors' meeting. We shall reserve the right to have a meeting that doesn't amount to anything except having a good time together if we want to; but it is likely that such a gathering of men as this will bring forth something, on many occasions, that will be useful to our country.

The men who meet here, away from their jurisdictions, have no power except the merit of any thought they bring for-

ward. Thoughts rule the world, and one man may express a thought that may rule millions. But here, as I say, only the merit of the thought has any weight or force. That weight or force is added to by the fact that in a certain way these men represent their people—they are not elected to represent them in this meeting and have no legal authority to do so; but still they do represent the spirit of their people and their words, if wise, have added force from the positions which they occupy.

I am very grateful to the Governors for electing me Temporary Chairman. I have been very glad to write the letters that brought us together. I don't know any meeting anywhere that I would rather attend. I do hope that this meeting will be such a good meeting that no man here will ever miss such a conference again—that is until his time comes —and that we will accomplish such results that the Governors who are not here will be anxious to attend the next meeting of this kind. Of course this body changes with the years, as they pass, and that introduces a somewhat pathetic element that makes each meeting most impressive.

I want to say about this program that the Governors were very kind to help with it. Of course every Governor has the same right to appoint a committee that I had. But somebody had to take the initiative, and as I was indicated in the resolution adopted at the last meeting of Governors, after Governor Swanson got out, I took it upon myself to issue the call. I wish to express my sincere gratitude to Governors Hughes, Harmon and Weeks for the interest they have taken and the assistance they have given; amd also to say that Governor Marshall, who found it impossible to be here, has taken great interest in the matter. Governor Dineen has also shown great interest and regrets that he is unable to be here.

The Committee on Program asks me to say that this program is simply tentative and was simply gotten up in the hope that it might be useful. It can be changed in any way that the meeting sees fit. It seemed better to have something arranged beforehand as to how the time should be occupied in case nothing else came up or other plans were not adopted. The Committee on Program has been very modest about it and really hesitated about assuming to act; but I am sure

that what they have done will be appreciated and will aid the meeting very much in mapping out a plan of procedure.

Governor Fort.—I move that there be two committees appointed, one on Organization and the other on Plan and Scope for future conferences. The idea of our committee was that we should have some sort of order of procedure in the sessions, and we ought to get a report on that; and then you will notice that the tentative program calls for a report from the Committee on Plan and Scope for future conferences to be made at the last session of this conference.

The Temporary Chairman.—You first moved to appoint a Committee on Organization?

Governor Fort.—Yes. To consist of five members to be appointed by the Chair.

The motion was seconded, and the question being taken, it was unanimously agreed to.

The Temporary Chairman.—I will appoint as a Committee on Organization Governor Fort of New Jersey, Governor Kitchen of North Carolina, Governor Norris of Montana, Governor Draper of Massachusetts, and Governor Weeks of Connecticut. I would suggest that the plan of future conferences had better not wait until the last session of this conference, because some of the Governors may have left at that time. Without objection, I will treat it as moved and seconded that a Committee on Plan and Scope for future conferences be appointed. Shall the Chair name the committee?

Several Governors.—Yes.

The Temporary Chairman.—Shall the committee consist of five members?

Several Governors.—Yes.

The question was taken and the motion was unanimously agreed to.

The Temporary Chairman.—I will appoint as members of the Committee on Plan and Scope for Future Conferences, Governors Hughes, Hadley, Comer, Ansel and Harmon.

Governor Hughes.—In view of the care and time that Governor Fort has given to the subject I think it eminently fitting that he should make the report of the Program Committee.

Governor Fort.—The only report I have to make is to present the program itself as printed.

There has been some difficulty in getting the different Governors to take the parts that it was desired they should take, but I want to thank them all for the prompt way in which they responded to my correspondence and to my telegrams. If there is anything the matter with this program it is their fault and not mine, and if they don't like it—just as the Chairman says—they can change it, because it is only a tentative program. We have no patent on it and no desire that any particular thing shall be followed. We have tried to cover each session, for, say two hours to two and a half hours, including what will probably be the debates; and we have tried to cover as many subjects as possible.

You will note one thing in regard to this program, and that is that we have not put anyone down to read papers except Governors. The thought of the committee was that this was a Governors' conference, and it should be confined to the Governors as far as possible. If the conference wishes anyone else to address it, let the conference invite others to speak. The only exception we have made in this respect is in regard to the Civic Federation. You will note that this afternoon the fourth item on the program is "Reception of Committee from Civic Federation to present report on drafting of uniform laws which have been submitted for enactment." They have been working here and are in session to-day and some correspondence has been had between Governor Willson and Mr. Low, Judge Parker and others. Mr. Low and Judge Parker met with the Program Committee—Governor Hughes, Governor Weeks and myself (Governor Harmon not being present at that time)—and they suggested that they would like a place when they could come and present such suggestions for uniform laws as they might adopt. We put that on the program, therefore, as you will notice. And then they are to come again to-morrow to suggest resolutions which they have adopted. Those are the only things, those two instances, that are on the program outside of the papers by the Governors and of course you don't have to receive these gentlemen from the Civic Federation if you don't want to. If there is any suggestion from any Governor we will be very glad to hear it. My part has been a labor of love in this, and I have greatly enjoyed it.

The Temporary Chairman.—Mr. Easeley, the Secretary of the Civic Federation, applied to me and I told him I had no authority to speak, and in fact that nobody had any authority to speak for this meeting; but that it seemed to me to be in line with some things we would likely consider and that I should present it to the meeting for their consideration. I would like to have an expression of opinion in regard to it and I will therefore ask those who favor adopting so much of the program as relates to the reception of the committee from the Civic Federation to say Aye.

The vote being taken, the Chair announced that the vote seemed to be unanimous in favor of adopting the part of the program referred to.

Governor Ansel.—I move that the tentative program submitted be made the program of this conference; provided that it may be added to by vote of the conference.

Governor Hadley.—The motion of Governor Ansel is entirely approved by myself, but there is one suggestion I would like to make in reference to it and that is that the hours might be arranged a little differently, so that we might accomplish more fully the object for which we have come here. As the result of the experience we had at our meetings on the trip down the Mississippi river, it seems to me that outside the matter of making public sentiment and discussing questions of national importance, there is a great benefit to be derived from discussing questions with which all of us have to deal in an administrative way, as the Executives of the several states, and I see the program has not made any provision for discussion following the various papers.

Governor Fort.—It means to provide for discussion.

Governor Hadley.—I see there is some provision for discussion at the end of each session, but my idea was this. For instance, Governor Crothers of Maryland reads a paper on the subject of roads. That is an important question in every state, and there would be some points perhaps not brought out by his paper that we would want to ask about, and for that reason it seemed to me it might be advisable to start at ten o'clock in the morning, and then to have the sessions begin in the afternoon at two o'clock. We are all here, mainly, I suppose, for the purpose of attending this conference. I

would suggest that amendment to Governor Ansel's motion, that after to-day the hours for meeting be ten o'clock and two o'clock.

Governor Ansel.—I accept the amendment.

Governor Norris.—I second the motion made by Governor Ansel, with the amendment suggested.

The question was taken and the motion of Governor Ansel to adopt the tentative program as the program for this conference, with the change suggested by Governor Hadley, was unanimously adopted.

Governor Weeks.—Governor Fort in his remarks regarding the program did not say one thing that I think ought to be said at the outset, and which the Governor himself was very particular to express to the committee when the program was being arranged. We were very particular to select Governors from all sections of the country as far as possible, in covering the different subjects. We looked over the ground as well as we could and tried to have each section of the country represented as far as possible; we tried to take as many different states as possible.

Governor Fort.—What Governor Weeks says is true, but we found that a number of Governors could not attend this meeting and now, on looking at the program, I find that the Governors, so far as geographical location is concerned, are grouped together more closely than we might wish. But we have done the best we could with it.

Governor Hadley.—I was going to suggest that we might proceed with some portion of the program this morning. Governor Hughes is here, and I have no doubt that he could say this morning what he has in mind to say this afternoon. On the other hand, it may be that there are a number who are hoping to hear it this afternoon and who are not here now and would be disappointed if he were to deliver his address this morning.

The Temporary Chairman.—The program has been adopted in the shape it is, but it is still open to suggestions, Governor Hadley suggests that perhaps it would be well to have Governor Hughes' paper now. What is the pleasure of the conference?

Governor Ansel.—We would like to know Governor Hughes' pleasure.

Governor Hadley.—After conference with several other Governors, it seems to me that it would be disappointing to some who are not here if Governor Hughes should deliver his address now, and I therefore withdraw my suggestion.

Governor Ansel.—I would like to make this motion. There are quite a number of ladies who are present, and I would like to move that it is the sense of this conference that the ladies be invited to attend any and all conferences of the Governors.

The Temporary Chairman.—I declare that motion unanimously adopted.

The committees on Organization, on Program, and on Plan and Scope for future conferences will please get together and report to this body when they are ready to do so. We will now adjourn, to meet promptly at 2.45 o'clock.

(Thereupon, at 11.55 a. m., a recess was taken until 2:45 p. m.)

AFTER RECESS

The conference was called to order, pursuant to the taking of recess, at 2:45 p. m., by the temporary Chairman, Governor Willson, of Kentucky.

The Temporary Chairman.—There is a short report to be presented before we go to the White House—the report of the Committee on organization.

Governor Fort of New Jersey, from the Committee on Organization, submitted the following report:

First. There shall not be any permanent President of the Conference.

Second. A governor shall be selected to preside at each session of the Conference.

Third. The Committee on organization shall make recommendation to the Conference at the end of each session of a Governor to preside at the next session, and if the recommendation be approved by the Conference, he shall be the Chairman for that session.

Fourth. There shall be a permanent secretary of the Conference, selected by the Conference as its pleasure.

Fifth. The proceedings of the Conference shall be stenographically reported.

Sixth. There shall be no rules for the government of the Conference in discussion or debate and all procedure shall be at all times under the direction of the Conference itself.

On motion the report was accepted.

Governor Fort.—We recommend for Chairman for the session this afternoon, Governor Harmon of Ohio.

The motion was seconded; the question being taken, it was unanimously agreed to.

The Temporary Chairman.—We will now adjourn and proceed to the White House.

(Thereupon the Governors present proceeded to the White House and were received by President Taft in the East Room.)

After an informal reception, Governor Willson of Kentucky said:

Mr. President, the Governors of thirty of the States in conference assembled have requested me to say to you that we pay this visit not only of ceremony but a sincere greeting from the heart.

You are President of all the people and we in our States are trying to be governors of all our people, and the same spirit and impulse that governs you governs us. We know no other way and you know no other way but to serve all of the people to the very best of the ability that God has given you and us.

We take pleasure in being with you and we feel it a great honor to be greeted by you.

REMARKS OF PRESIDENT TAFT.

My dear fellow executives and fellow sufferers; I am delighted to greet you at the White House, and I should have been glad to have had you here during all your sessions, so that you might have made the White House your headquarters, but in discussing the matter with the committee it occurred to them and to me that it would possibly be better for you to hold your sessions in a neutral place, so to speak. When

you were here before, Mr. Roosevelt, I think, extended to you the hospitality of the White House, and the meetings were held here, but those meetings were so fully his, in the sense of being called by him, that it seemed entirely appropriate; whereas now, I hope, this is a movement among the Governors to have some sort of permanent arrangement that shall bring them here without suggestion from anyone but the Governors themselves.

You are here for the purpose of considering those subjects for laws in respect to which the legislation of the States ought to be uniform, and to take that course of making up for what some people point out as defects in the Federal Constitution. I regard this movement as of the utmost importance. The Federal Constitution has stood the test of more than one hundred years in supplying the powers that have been needed to make the central government as strong as it ought to be, and with this movement toward uniform legislation and agreement between the States I do not see why the Constitution may not serve our purpose always. I speak to you as gentlemen who can influence legislation in the States, and who are in a sense responsible for it.

I have thought that the English system presents in certain respects a better system than ours, in view of inevitable responsibility of the executive for legislation. It seems to me, without ever hoping or suggesting that there can be any change in our system (for its rigidity has advantages), that still that system would present a good many opportunities that you and I would like to seize upon to argue out questions to the legislature and to save them time by giving them considerable information on subjects in regard to which they are not advised. It shortens, I am sure, the course of legislation, but we haven't got that system, we haven't it in any State, and we are not going to have it, so there is no need of mourning over the fact that we cannot have it.

I am only speaking to you as executives who have felt the injustice of that sort of criticism that comes from the lack of that feature of the English system I have pointed out. You are the titular head of the party, perhaps, of your State, and you are made responsible for everything that is done by the party, although you may not be able by any de-

clared legal way to control it, and therefore you have to use those influences, personal and otherwise that are legitimate, to bring about the legislation, for which the party has to be responsible. It is because you do have such great influence in moulding legislation that your meeting to secure uniformity of laws is so important and significant.

I should like to sit down with each of you and talk over your experiences and know how you arrange the successful adjustment of those things. I should like to talk to my friend from Ohio as to how he gets along with the Republican legislature, as I know something of the troubles where one has a Congress that is nominally of his own party.

Gentlemen, I am delighted to welcome you here and delighted to hope and feel that this is the beginning of conferences which are certain to lead in the end to an adjustment of legislation that shall make our country capable of doing so much more in the direction of joint legislation and work toward the public good than we have ever before thought possible. I hope to have the pleasure of seeing you to-night in the White House and of meeting you to-morrow night again.

The trip down the Mississippi River and my trips through the country gave me the opportunity of meeting most of the Governors of the States, and it is a great pleasure, I assure you to renew the acquaintance thus so pleasantly begun. (Applause.)

(Thereupon the Governors proceeded to the New Willard Hotel.)

Meeting reassembled at the New Willard Hotel at 3:50 o'clock p. m.

The Temporary Chairman.—I have the honor and pleasure to introduce my next door neighbor, Governor Harmon of Ohio, who will preside over this Congress.

(Thereupon Governor Harmon took the Chair.)

The Chairman. (*Governor Harmon*). Gentlemen of the Conference, I want to congratulate the committee on the very happy thought of having a different presiding officer at each session. I cannot imagine any reason why I should be the first selection except that it is the part of wisdom—and I know you are all wise men—to apply in public affairs

the wise maxims, which spring from domestic experience, and one of the first maxims of that sort is to please the children, and I am one of the babies in this conference.

I think no one can claim to be younger than I except our esteemed friend who succeeded to the late lamented Governor Johnson.

Whatever the reason was I thank you very much for the honor, and we will now proceed with the program for the afternoon.

The first thing on the program is the first regular address, and I want to say in introducing the speaker that I am sure that everybody in the country feels, as we do, in view of the recent announcement that he is not going to run for Governor again—or, as I saw it, that he is going to retire from public life—that we are all sorry. We hope it is limited to not running for Governor again; because I am sure he has shown during his public career the qualities which the whole country wants to see remain in public life. I now have the pleasure of introducing Governor Hughes of New York, who will address the Conference on the subject of Governors' Conferences, their Scope and Purpose.

GOVERNORS' CONFERENCES, THEIR SCOPE AND PURPOSE

Governor Charles E. Hughes of New York

Mr. Chairman and Governors: When President Roosevelt in May 1908, called a conference of the Governors of the States he gave impetus to a movement which could not be confined within its original bounds. Without any disparagement of the patriotic motive which led him to summon the Governors to meet at the White House for one very important subject to which he directed their attention, this meeting in fact is most significant in its contrast to that earlier meeting. Then we were called together by the President to meet at the White House. This meeting is called upon the initiative of the Governors themselves. Then we were to consider the question of the conservation of our natural resources. Now we are not limited to any subject, and great as may be the importance of conserving our natural resources and of

the other subjects which will be considered at this time, I conceive that the question of fundamental importance for our consideration and discussion is what use we can best make of these meetings, and what is the proper scope or function of a Governors' Conference.

I thoroughly agree with the remarks that were made by Governor Willson in opening the Conference this morning, that we are not subject to restrictions. Possibly the only restriction which should be regarded is that two gentlemen should not address the Conference at the same time. With that exception, the field is open. No majority vote can control the independent members of this assembly.

But there has been underneath what was said to us so gracefully and candidly by the President, and the remarks of the presiding officer of the morning, an evident sense of the deep responsibility which we have in inaugurating a movement of this description, and while we may justly treasure our freedom, we should be at the same time most solicitous that this freedom should not be abused and should realize that we have largely within our power at this time the direction and ultimate benefit of meetings of this description. As we conceive the function of those meetings, and as we recognize their proper limitations and purpose shall we be successful in developing to the fullest extent the opportunity which our joint de liberations may afford.

And so, at the outset, the relation and proper limitations of our efforts should be recognized. We are here in our own right as State Executives. We are not here, I assume, to deal with questions which are admitted to be of exclusively national concern. These are matters to be dealt with by the Federal Government. The people of the States in their capacity as citizens of the United States are represented by the President and Congress. We are not here to accelerate or to develop opinion with regard to matters which have been committed to Federal power. How the Federal administration shall be conducted is not a matter which concerns State Governors in their official capacity. Whether Congress shall pass a law or not, is for Congress to decide, and with respect to this it is the President's prerogative to make recommendations. If Congress

acts beyond its authority its action is nugatory and the Supreme Court of the United States may so declare it.

We are not here to direct the influence of the high office to which we have been chosen in the several States toward matters outside our official cognizance. It would be unfortunate in my judgment if there should be confusion in the public mind with regard to the proper agencies of national action, or if we should endeavor to develop in a meeting of the Governors of the States an extra-constitutional body to deal with questions which are not the concern of the States as such. Our influence, I believe, will be enhanced, and the gains to be derived from our mutual intercourse will be far greater, if we confine ourselves to those matters which lie within our respective spheres as State Executives.

But where State action is involved, it is the prerogative of the State Governor either to act, if the subject lies within his administrative authority, or to make recommendations to the Legislature if the action be legislative. And it is those matters which may properly be the subject of official consideration on the part of a State Executive that I conceive to fall within the province of this Conference of State Governors.

Nor is it likely that we shall forget that within this sphere the advantage of these meetings must be found in the formation of common sentiment. We cannot commit the States to any course of action. It is not sought, and even if we could overlook the difficulties in the way it should not in my judgment be sought, to create another agency of government or to invest a body such as this with governmental functions. We have our agencies of government, State and Federal, and their respective functions should be clearly defined in the public mind and should invariably be recognized. These agencies are adequate, and the object of our meeting is simply to promote their usefulness, so far as they pertain to the States.

But if it can be deemed to be of advantage that we should secure greater uniformity of State action and better State Government—and who shall deny this—it would be difficult if not impossible to suggest any better means for generating the necessary motive power than may be supplied through conferences of Governors.

We are but few in number and represent the entire people of our respective States. We come to these meetings equipped with official experience and we have emerged from contests in which the people have dealt with questions of State policy with respect to legislation as well as administration. Executive recommendations grow in effectiveness because the Chief Executive represents the people at large and not a particular community or district, and there is an increasing tendency to regard him, and to hold him accountable, as the spokesman of the prevailing sentiment. No legislative leader represents such a constituency, and even a legislative majority rarely rests upon so broad a base of public opinion. Against the scattered exponents of local interests, the State Executive represents in the public mind not simply administrative power, but legislative initiative, and in a peculiar degree, although confined to prescribed functions, he becomes the exponent of State policy.

A Conference of Governors can, therefore, be expected to accomplish much more than conferences of legislative committees or of appointed commissioners. Accord between Executives upon questions which they have carefully considered together cannot fail to be of enormous influence.

Whatever view may be taken of the advisability of extending Federal power or of a wider exercise of existing Federal power it is manifest that the future prosperity of the country must largely depend upon the efficiency of State governments. Proper local administration is a necessary complement of essential Federal administration. National activities inevitably will widen and if we are to prevent an excessive strain upon national administration we must develop our local agencies to their maximum efficiency within their proper spheres. We are fortunate in having our local bases of administration reinforced by sentiment and tradition. And the advantages of our dual system are so great that we should aim to reduce to the fullest extent possible, through mutual intercourse and harmonious action, whatever inconvenience or injustice may result from present methods or laws.

The scope of these conferences may be deemed to embrace at least three groups of questions: The first relates to uniform laws; the second relates to matters of State comity where,

if absolute uniformity may not be expected, causes of friction may be avoided and the general welfare may be promoted by accommodating action; the third relates to matters which though of local concern can be better treated in the light of the experience of other States.

First. As to uniform laws:

There are subjects which under the Constitution can be dealt with only by the States and where the diversities of State law are not required by any proper view of State policy. While the authority is local, the interests affected are not exclusively local. The existing diversities reflect a difference in tradition but not an essential difference in interest. They have grown up through contrariety in judicial opinion or in legislation. They represent simply an individualizing tendency which fails to regard the conveniencies of commercial intercourse. To secure uniformity of legislation, no sacrifice is required other than perhaps of local pride of opinion or of accustomed practice. For example, without attempting to be comprehensive, I may mention the law of negotiable instruments and the rules governing the transactions of trade, such as are involved in the law of sales, of bills of lading, of warehouse receipts, and of stock certificates. No State has any particular interest in maintaining existing diversities with respect to the general incidents of commercial intercourse, and the common convenience of uniformity of regulation is too obvious to require arguments in its support. We have had State commissioners by whom drafts of uniform laws have been prepared and in some instances uniform laws have been enacted by many of the States. A notable illustration is the Negotiable Instruments law. But while commissioners of great ability, specially appointed for the purpose, have been active in formulating drafts of uniform legislation, there has been lacking a suitable appreciation of the importance of this movement and it has engaged too little the attention of our State Executives.

It would not be possible for Governors in conference to undertake the drafting of uniform laws, but their united consideration of their importance and of proposed statutes drafted by commissioners of their appointment, will bring these matters into deserved prominence and supply for the progress of uniform legislation a much needed impetus.

Further, these meetings cannot fail to enlarge our conception of the field within which uniformity is admissible and obtainable and the States would probably be led to harmonious action with respect to many matters which may now appear to be outside its range. It is natural that a beginning should have been made with regard to those familiar operations of trade where conflict of laws involves daily inconvenience and there is a minimum of prejudice to be overcome in securing uniformity. Gradually enlarging the scope and forming the habit of agreement, we may expect to come to uniform legislation in matters of status, such as legitimacy and divorce. Where the matter is not one involving in its nature a separate local interest, and diversities in laws give rise to needless embarrassments, we should show our capacity to make progress in the art of government by removing them.

There will also be numerous cases in which concurrent action of a group of States may be of advantage even though the subject is not one affecting all the States. It may be the question of a watershed upon a boundary, or of the pollution of waters, or of the development of waterways or other improvements, or of the maintenance of special regulations over a given extent of territory. These conferences will furnish a convenient opportunity for the consideration both of matters pertaining to all the States or those in which groups of States may be especially interested.

Second. As to State comity, where uniformity of laws cannot be had.

There are other subjects where there are separate local interests which in large measure make uniform legislation impracticable. Yet the effect of legislation contrived either in a hostile spirit or without proper regard to the general interest may be most prejudicial to our common prosperity. There is a field for State comity which does not extend to the point of uniformity.

For example, in collecting revenues each State necessarily must be the judge of its own exigencies and of the methods and subject of taxation within its sphere of action. But when a subject of taxation is treated as such in many different States, interchange of views and a desire to maintain such re-

lations as befit sister commonwealths, the citizens of which are also citizens of the nation, should enable us to bring about adjustments which will promote the interests of business without sacrificing the interests of the State. While the State, within its own constitutional province, is subject to no control save that of its own people, no State can live unto itself. States cannot indulge in arbitrary action affecting matters having a general interest or deal with each other as hostile sovereigns without prejudicing the interests of their citizens who must finally find their prosperity in the common welfare. Each State will find it to its advantage in the long run to smooth the ways on intercourse and so to use its own power as neither to create or protect agencies injurious to others nor to cripple proper enterprise.

We have our national instrumentalities, but without completely making over our Constitution—an undesirable and unthinkable project—we cannot accomplish what is necessary to facilitate our mutual intercourse, save through the instrumentalities of the States. The significance of this conference lies in our recognition of the fact that to make our system of government answer its intended purposes, we must encourage the development of State comity without loss of State prerogative.

Third. As to interchange of State experience.

Conferences of Governors also promise large benefit with respect to matters purely of local administration. Here are forty-six commonwealths dealing with substantially the same problems of government, constituting a laboratory of experimentation in free institutions. With respect to governmental machinery, the question is not so much one of uniform laws as of having the best State government possible. There is an extraordinary lack of knowledge in each community as to what is the actual experience of others. We must in great measure depend either upon the current accounts of the newspaper press, reflecting the sensations or the *animus* of the moment, or upon the inquiries of students frequently without the practical experience to give the needed point to their researches and observations, or upon partial and incomplete surveys prompted by political exigencies. The helpful activities of the various associations dealing with departments

of administration, such, for example, as charities, education, prison and civil service reform, should not be overlooked, and the advantages which are derived from their annual meetings are generally recognized. But important as it is to provide these means of voluntary research and criticism, these agencies become influential to the degree that responsible officers of the States take part in their work or are brought into direct contact with its results. There are also co-operative efforts on the part of certain State officers, which have proved highly beneficial as, for example, the association of State Insurance Commissioners.

We shall lose none of these advantages, but greatly enhance them and gain others by the frequent consultation of the Chief Executives of the States with respect to methods of State administration. There is no department of State work in which this correspondence would not be of obvious value; and had we nothing to consider but the possible increased efficiency of our own State governments, there would be abundant reason for stated conferences.

At our first conference a question of fundamental importance was presented with respect to the conservation of our natural resources. These ultimate bases of our prosperity must be protected from capture or spoliation. And we should be astute to devise means by which the opportunities of honorable industry may be preserved and extended while the public right is strictly safeguarded. The preservation and care of forests, the creation and maintenance of State reservations, the development of waterpowers, provision of roads and waterways, the promotion of agricultural interests, and various plans for internal improvement demand the best thought of our generation and the wisest methods which may be devised after collaboration and comparative study.

There is the question of financial administration involving taxation and appropriations, or budget making. In every State, I believe, there is pressing need of considering the best means of raising the necessary money to meet state expenditures, of avoiding haphazard allowances and of making systematic provision so that requests for appropriations may be properly scheduled in advance, annual outlays may be compared, and the demands upon the State carefully and impar-

tially analyzed. There is no one of us, I take it, but would like to have the opportunity of learning at first hand the experience of other Executives who are similarly charged with the duty of securing, so far as possible, economical administration.

Then there is the institutional work of the State. We have our schools, charitable institutions, hospitals for the insane, and prisons; and these present important problems both with respect to the aims of philanthropy and the demands of prudent management. Each State here has much to learn and something to teach. Our curative, custodial and correctional methods are improving, but in our efforts to make progress we cannot afford to ignore available experience along the same lines and under similar conditions. Problems are presented with regard to State employment, the extension of the merit system of selection, the financial control of State institutions, and the co-ordination of State work, as to which the interchange of State experience would be of great importance.

It would also be of obvious advantage if we could consider together the principles of State supervision and regulation, and in the case of banks, insurance companies and public service corporations could not only enjoy the benefit of comparative examination of existing methods, but also endeavor so far as may be to relate our State supervisory activities to common standards.

The problems of labor involving those of child labor, of safeguards against injury, of employers' liability and compensation acts, of prison industries, of means to facilitate the arbitration of controversies; the protection of the public health including the prevention of stream pollution and the checking of the ravages of communicable disease; the methods of inferior courts representing to so many of our people nearly all that is known of order and of justice; our electoral machinery, and the questions relating to the number of elective offices, the nominations of candidates for public office, the form of ballot, campaign contributions, and corrupt practices; the obstacles to the enforcement of the criminal law by crafty means devised to cheat State authority, as for example, in the case of syndicated bucket shops operating in different States; the improvement of municipal administration, and the

means of securing efficient local government—these are some of the matters too serious and difficult to be dealt with hurriedly or *en bloc*, but the consideration of which at conferences like these would in the course of time yield results of the highest value to our States.

To secure these benefits in the fullest degree, it is manifest that a continuing organization is desirable. How is this to be supplied? The Governors, for the most part, have short terms, and the membership of the Conference must inevitably change in large measure from year to year. No title or designation can obscure the real character of the Conference or the fact that it is composed of Executives of brief authority each one of whom is independent of and equal to the others, and upon whom no binding rules can be imposed. It must find its strength in harmony and its influence in sound reason commonly recognized.

But slender as is the basis for an organization in the accepted sense of the term, there is no reason why we should not adopt means adapted to attain the objects we have in view. It is entirely feasible, for example, that the Conference should not only make arrangements for a future meeting but should indicate, at least tentatively, the subjects which should then be discussed. It may appoint committees who may be entrusted, I will not say with the duty, but with the privilege of corresponding with the respective Governors during the interval and of securing authoritative information from all the States with respect to the subjects which are to be considered.

This information may not only be collated but may be digested and prepared in suitable form for submission to the respective Governors in advance of the meeting. And this submission may be accompanied by recommendations of the committee, to be brought before the Conference for discussion. By a suitable division of labor and the assignment to several committees, respectively, of subjects deemed to be of paramount importance, the way would be prepared for a discussion at the next Conference of specific recommendations based upon careful study by those who had at their command the experience of all the States.

A small amount of money would suffice all the needed expense of correspondence and also to provide a secretary of

the Conference whose office by force of tradition might easily become permanent and thus preserve desirable continuity. The needed sum could readily be supplied by suitable appropriations in amounts apportioned according to the population of the States respectively. Without attempting anything very formal in the way of organization, and despite changes in membership it would be entirely practicable, it seems to me, to provide for systematic, continuous and profitable endeavor, and in the course of years we should have the benefit not simply of annual discussions and agreements as to State policy, but also of an accumulation of material of inestimable value to the States.

The ancient jealousies that have divided us are now forgotten. The sentiment of national unity has overcome divisive prejudices and the people of this great land, from one ocean to the other, are animated by a common patriotic impulse and intense devotion to the common interest, against which sectionalism will direct its attacks in vain. This sentiment of national unity, which is the outgrowth of an increasing intimacy of relation and facility of communication, should enable us the more easily to maintain and perfect, with wise and harmonious adjustment, the essential instrumentalities of State government, upon which, as well as upon our national activities, the welfare of the people depends.

The Chairman.—We shall be glad to hear from the Committee of the Civic Federation to present their report on the framing of uniform laws, through the Honorable Seth Low, who will kindly come to the platform.

Mr. Seth Low, of New York.—Through the courtesy of Governor Willson of Kentucky and of the Committee on Program of your Conference, of which Governor Hughes is Chairman and Governor Fort and Governor Weeks are members, the privilege has been allowed to us to be here at this moment as a committee to ask your attention to certain action taken by the Conference on Uniform State Legislation, which is meeting in Washington at this time, at the call of the National Civic Federation.

This Conference is not a department of the National Civic Federation. Our function has been discharged in calling it

together. Its membership is made up of delegates named by the Governors of 44 States and Territories and by the representatives of eighty commercial organizations and organizations of kindred character.

The call for the Conference grew out of our experience in the Federation, which is unique in this respect, Mr. Chairman, that it aims to unite in one body the large employers of labor, the leaders of organized labor, and the general public. The only reason that unorganized labor is not represented, is because being unorganized it has no official representatives.

We found ourselves brought up face to face with the desirability of uniform legislation on so many subjects that suddenly the determination was made to call for this conference, which is now being held here.

We were glad to learn that many others had been at work in this field before ourselves, and I think it is literally true, gentlemen, that we became aware for the first time after having determined to call this conference that many of the States had already appointed Commissioners on Uniform State Legislation at the instance of the American Bar Association almost thirty years ago.

Our Conference naturally has taken the form endeavoring to give added impulse to the movement that has already been so well begun, and it has been the delight and pleasure of the Conference to recognize first of all the really splendid work which has been done by these representatives of the States in this direction; and, secondly, to put ourselves behind that movement and to be here to-day to ask you to take it up and carry it still further forward. I believe that forty-four states, two territories, the District of Columbia and the Government of the Philippines have appointed Commissioners on Uniform State Legislation, but all of those commissioners do not serve by virtue of legislative authority. Some of them have been appointed by the Governors without any legislative action to give them official status.

We think that the very first thing to be desired is that every State and Territory in the Union, and all our Insular possessions, every Governmental unit, should be officially represented on that body.

In the course of the fifteen or twenty years of active work which the Commissioners on Uniform State Laws have been doing they have perfected four or five laws, which have been enacted to some extent by various States. The first of those was the negotiable instrument law, which is now the law in thirty-eight States, if one counts territories and the District of Columbia as States.

The new act that was perfected and submitted to the States is known as the warehouse receipts act, and that has been adopted, I think, by seventeen or eighteen States, including the States of New York, Illinois, Massachusetts and Pennsylvania, the great commercial States of the Union. Our Conference has put itself behind this uniform law for two years. While it changes the theory of what has been the New York law in regard to value and negotiability, it conforms the law to the law of the United States as defined by the Supreme Court as long ago as 1842, and the law of many of the States of the Union as it has always been, and to the law that prevails everywhere in Great Britain and its Colonies.

There is no objection from any quarter that I know of to the bill of lading act, to the sales act, except the objection that lies in common against the warehouse receipts act and those acts, that in changing the definition of value, that in striving for more perfect negotiability, the law of New York is changed.

Now, our Conference adopted this morning these resolutions, and they appointed a committee of nine. I have not, unfortunately, a list of the members, but I may be able to name them. They are Mr. Richburg, of Illinois, Mr. Eaton of Rhode Island, Mr. Walter George Smith, the President of the National Conference on Uniform State Laws; Mr. Brown of Minnesota, Mr. Meldrum, of Georgia; Mr. Libbey of Maine; Mr. Thomas Nelson Page; and Mr. Layman and Mr. Rogers of Connecticut, the Dean of the Yale Law School.—all gentlemen whose names and whose presence indicate to you the importance of the action which we have taken by the Conference which has sent them here, and whose names and whose presence may well assure you that the recommendations which we submit to you as Governors are well worthy of your most careful and earnest consideration. The actual resolutions which were adopted, if I may read them, are as follows:

"Resolved that this National Conference on Uniform Laws advise the Governors of the States now in session at Washington that it endorses the acts prepared under the direction of and recommended by the Commissioners on Uniform Laws as stated before, and that this body hopes that the States which have not already done so will without delay enact these measures into law, viz:

"The Negotiable Instrument Act, the Warehouse Receipt Act, the Sales Act, the Bill of Lading Act, the Uniform Divorce Act."

I perceive that among the laws mentioned in the resolution is the Uniform Divorce Act. That act was prepared by a national conference called at the instance of Governor Pennypacker, of Pennsylvania. They recognized that it was hopeless to expect to bring about agreement among the States as to the causes of divorce that should be recognized, but singular as it may appear, they reached the conclusion with entire unanimity as to this law which deals with questions of precedure, and which aims to put an end to migratory and fraudulent divorce. So that this law has behind it, first of all, the authority of a conference called for that express purpose, joined in by delegates appointed by the Governors of almost all of the States. Having been drafted and approved by that body it was submitted to the National Conference on Uniform State Laws, examined with the utmost care by representatives of all the States included in that Conference, adopted by them and recommended by them, and under those circumstances our conference has felt that we were safe, and it may interest you to know, in view of the somewhat contentious character of the subject, that in our committee on resolutions and in the Conference itself not one vote of objection was cast against this recommendation.

The next resolution is also germane to this thought, although, again, it represents a little different mode of action.

"Whereas, Congress in June, 1906, passed the National Food and Drugs Act, which law has since been adopted in all substantial provisions by upwards of twenty-six (26) States,

"Resolved, That this Convention recommend the adoption of this model uniform statute by the legislatures of all States which have not already so acted, and urge upon the Governors and legislators of all States that they approve and pass only such food and drug laws, or amendments thereto, as are modelled after the provisions of the national law."

We feel fully justified in commending this law also to the Governors and legislators of the States which have not enacted it. That resolution in its wording leaves me to point out one matter on which our Conference has not yet acted, but upon which I think it will act before we adjourn, and that is there are two parts of this problem of uniformity. The first thing is to get it and the second thing is to keep it. We have found that already to some extent the uniform laws which have been adopted by the different states are being subjected to amendment, at one session after another of the Legislatures of those States. I don't know that very vital amendment has yet been made in any of them, but it is evident that that process, unless it can be regulated, will bring us around in a few years to the cycle when we must start again to get uniform laws.

I think we will urge upon the commercial bodies we can reach that when they want to propose amendments they shall first of all submit them to those bodies.

One other resolution was passed by the Congress dealing with quite a different matter.

"Resolved, That this National Conference on Uniform Legislation, recommend to the Governors' Conference that efficient and uniform legislation be adopted to suppress and prevent the procurement of women for immoral purposes, known generally under the name of the White Slave traffic; and that the Commissioners on Uniform Laws be requested to draft a bill which will carry into effect the foregoing recommendation."

That is a response by the Conference to the feeling that has been so keenly aroused during the last few months, in response to the report of the National Commission on Immigration that this White Slave traffic is not, as perhaps many of us have

thought, a figment of the imagination, but a real thing that has to be fought and crushed.

Mr. Chairman, those are the resolutions of our Conference adopted this morning with absolute unanimity. The Merchants Association reserved its freedom of action and asked to be excused from voting. I thank you, Mr. Chairman, for this opportunity.

The Chairman.—I suppose the usual course of these resolutions is to have them noted on the minutes as received and filed?

If there is any further action desired, it will be in order; or if any other member of the Committee wishes to add anything to what Mr. Low has said, we should be glad to hear it.

Mr. Low.—We will excuse ourselves now, Mr. Chairman, thanking you for your attention.

The Chairman.—General Louis Wagner of Philadelphia is present on behalf of a committee, and he wishes to extend an invitation and we shall be glad to hear from him.

General Wagner.—I am the Chairman of the Gettysburg Commission appointed by the Governor of Pennsylvania, and the Rev. Dr. Boyle who is with me, is secretary of the commission. We represent Pennsylvania by virtue of an Act of the Legislature of the Commonwealth.

The Governor of the Commonwealth appointed nine citizens of Pennsylvania to constitute a commission to be known as the "Fiftieth Anniversary of the Battle of Gettysburg Commission"; to arrange for a fitting observance, at Gettysburg, of the Fiftieth Anniversary of the Battle, with authority to invite the co-operation of the Congress of the United States and of other States and Commonwealths, the Commission to make report of its action, with recommendations to the next session of the General Assembly of Pennsylvania.

For the purpose of carrying out the provisions of the Act the sum of $5,000 was appropriated.

The Commission was appointed and organized, and a communication was forwarded to each of the Governors, and we have received 26 replies accepting the invitation.

Many of the Governors from whom we have replies have appointed their representatives. All of the replies received

were of the most favorable character, all of them approving of the general purposes.

The plans themselves, Mr. Chairman, have not yet been worked out, and will not be until we have the privilege of confering with the representatives of the several Governors, when this Conference will be called upon the battle-field of Gettysburg.

Our sub-committee is here to-day for the purpose of confering with the President of the United States and the War Department. Do not misunderstand the purposes for which this Commission was appointed. It was not for the purpose of fighting the battle of Gettysburg over again. but it is for the purpose, after fifty years from the time, to get together those of us who fought there and those of us who did not, and to congratulate each other that the contest then waged was happily ended, and that we are at this time a united and happy people. I have the honor to request, that you will appoint representatives to attend this meeting.

The Chairman.—The next subject on the program is discussion and miscellaneous business.

Governor Weeks.—Under the head of miscellaneous business I would like to announce that the Chairman for to-morrow morning's session will be Governor Pothier of Rhode Island.

The Chairman.—I would like to inquire whether the report that was adopted carries the approval of the successive recommendations of the committee, or must each one of them be a separate report and be received and adopted?

Governor Weeks.—I do not think we need to vote on each separately.

The Chairman.—I will assume without question that the approval of the report carries the acceptance of whoever the Committee names at each session, to be the Chairman of the session.

Is any Governor present moved to discussion by any of the valuable ideas that we have heard to-day? If so, he will be in order. If there is any other miscellaneous business, that will be in order.

Governor Willson.—We ought to have a committee appointed to take care of the necessary expenses of the conference. I

would move that the committee on arrangments look up the matter of what is necessary.

The Chairman.—I do not think any formal motion is necessary. It is the general sentiment that the committee that made the arrangements will have the power to finance them. There being no further business before the meeting, without objection we will now stand adjourned until 10 o'clock to-morrow morning.

(Thereupon, at 5:15 o'clock p. m., the Conference adjourned until to-morrow, Wednesday, January 19, 1910, at 10 o'clock a. m.)

SECOND DAY

New Willard Hotel, Washington, D. C.,
Wednesday, January 19, 1910.

Met pursuant to adjournment of yesterday. Governor Pothier, Chairman for the Session, presiding.

The Secretary called the roll and the following Governors were present:

Governor Penniwell of Delaware
Governor Brown of Georgia
Governor Willson of Kentucky
Governor Draper of Massachusetts
Governor Shallenberger of Nebraska
Governor Quinby of New Hampshire
Governor Fort of New Jersey
Governor Kitchen of North Carolina
Governor Harmon of Ohio
Governor Pothier of Rhode Island
Governor Ansel of South Carolina
Governor Prouty of Vermont
Governor Davidson of Wisconsin
Governor Comer of Alabama
Governor Shafroth of Colorado
Governor Weeks of Connecticut
Governor Brady of Idaho
Governor Carroll of Iowa
Governor Fernald of Maine
Governor Eberhardt of Minnesota
Governor Hadley of Missouri
Governor Norris of Montana
Governor Hughes of New York
Governor Burke of North Dakota
Governor Vessey of South Dakota
Governor Glasscock of West Virginia
Governor Brooks of Wyoming
Governor Sloan of Arizona
Governor Spry of Utah
Governor Stubbs of Kansas
Governor Curry of New Mexico

The Chairman.—Is it your pleasure to have the minutes of yesterday's proceedings read?

Governor Kitchen.—I move they be dispensed with.

The Chairman.—If there be no objection, we will have them dispensed with.

There was no objection and it was so ordered.

The Chairman.—We will proceed to the program for the day. The first on the program is a paper on "Roads" by Governor Crothers of Maryland.

The Secretary.—We have a telegram stating that on account of business he is unable to be present.

The Chairman.—The next is "Waterways", by Governor Dineen of Illinois.

Governor Fort.—I have a letter from Governor Dineen stating he regrets very much he is unable to attend the meeting and read the paper.

The Chairman.—The next is "Forests" by Governor Quinby, of New Hampshire.

FORESTS

Governor Henry B. Quinby of New Hampshire

Gentlemen, I anticipated that there would be other papers of sufficient length to occupy the time, in addition to my own, and that there would be, as there probably will be, a general discussion of the matters before the Conference this morning; but it seems that the other two gentlemen have failed to appear, and so it will be a pleasure for me to proceed.

Many things of benefit to our entire country can, I believe, be promoted by this conference if we ourselves arrive at a harmonious conclusion, and while all will be of importance, I consider most vital the question of the conservation of our forests, and the consequent preservation of our water powers, and this should appeal to our Senators and Members of the House of Representatives, no matter whence they come, whether from the North, South, East or West; they should rise above considerations of party or section and by voice and

vote enact into law measures to carry this into immediate effect.

The committee to whom was assigned the task of arranging the programme for this gathering has given me the subject of "Forests",; a theme as broad as the continent itself. Assuming, therefore, that other gentlemen will also speak on this question, I shall confine myself, mainly, to stating the needs of my own State of New Hampshire for conservation of the forests and what depends upon the passage of the bills before Congress creating the White Mountain reserve, thus providing that our forests and therefore our waters and the navigability of our streams shall be safeguarded for all time so that future generations shall not come upon the scene to find that by the greed or thoughtlessness of those who preceded them they have been deprived of their birthright.

Careful observation and exhaustive experiments have demonstrated that upon our forests depends, in part at least, the preservation of our water supply, and nowhere is this more noticeable than in my state, where lumbering has gone on, especially in late years, with great rapidity and the deleterious results of which are to be seen in the diminished flow of water.

In the White Mountain region are the sources of five great rivers, which flow down to the sea. Here rise the Androscoggin, the Kennebec, the Saco, the Merrimack and the Connecticut, turning as they flow the wheels of numberless industries, including the great cotton, pulp and paper mills of Maine, New Hampshire, Vermont, Massachusetts and Connecticut and giving employment to a vast army of honest, industrious toilers.

Here also is the great recreation resort of our whole country, its people coming as they do even from the shores of the Pacific and the Gulf of Mexico, and principal among the attractions drawing them are the magnificent mountains which together with the valleys, verdure clad, are a delight to the eye, but which, stripped of their covering, will no longer be things of beauty, but dreary, uninteresting wastes. This must happen if the lumbermen be thoughtless of the future.

The proposed White Mountain reservation is admirably adapted to the growth and propagation of timber and with this

water shed protected, as it will be if the government assumes the care of it, the devastated portions will gradually be reforested, thus providing against floods and the drying up of the streams which originate there, so that they will continue navigable and serve their great purposes of furnishing power for innumerable enterprises dependent upon them; while the interests of the lumbermen and the manufacturer of pulp will adjust themselves by the intelligent cutting of the timber and wood under government supervision.

We have only to turn our attention to the methods pursued in some of the countries beyond the sea for a full confirmation of this, and notably by Switzerland, a country whose wonderful forethought and utter absence of selfishness have provided for the population of today, six centuries after her system of cutting the wood and timber was inaugurated, thus reducing the taxes and the national debt to a minimum from the profits which accrue.

Our consul at St. Gall says: "The government of Switzerland has so carefully regulated the timber output that it has never been permitted to exceed the natural growth. The actual forest area of Switzerland is 2,205,508 acres, and 781 acres of the state forests are set aside as a nursery, and from this nursery in 1908 over 22,000,000 young trees were taken and transplanted in the various forests."

As in our region, so in Switzerland, spruce is the most important and the most sought for of the conifers, but instead of the unlimited and unrestricted slaughter which prevails here, our consul gives the regulations in use there, and says in regard to the financial side: "Statistics of the receipts and expenditures of all forestry work in this country are not available, but a couple of cases may be cited which show gratifying returns. The total profits from the sale of wood in 1908 from 2,241 acres of state forests in the canton of St. Gall are given as $17,352.56, and in the forests of the town of Winterthur, amounting to 2,833 acres, the net profits were $29,-540.13, or an average profit of about $10.42 per acre."

In northern New Hampshire, including the White Mountain region, it is estimated that there are 1,684,206 acres of forest land owned by corporations, companies and individuals, and under the impetus of the rapidly increasing demand for pulp

and building material the wood and timber are being cut, and, as we are credibly informed, cut clean, especially on the mountain sides, and in fact wherever it can be logged to advantage, and much of it, which is too small for any use is being cut with the rest and left on the gorund to decay, and this, with the balance of the slash, presents an alluring invitation to the conflagrations which are frequent and most unwelcome visitors.

Contrasting therefore the conditions which obtain in Switzerland with those in our country, it would seem that by government intervention our forests can be conserved, a profit can be made for state and nation and the owners of the forest lands will eventually be the gainers. It is thus apparent that the time has arrived for congress to take decided steps in this direction that the many be not sacrificed for the few.

Why is America a laggard in the important concerns of preventing the waste of their timber, in reforesting her denuded forest tracts, and in establishing reserves so that the improvident methods of cutting can be prevented? The nations of Europe are fully alive to these interests and are constantly active in tree planting and in the work of cutting the growth upon scientific lines so that generations to come may derive inestimable benefit from their wisdom and their foresight.

The distinguished Senator from New Hampshire, Senator Gallinger, whose comprehensive knowledge of the subject renders him peculiarly well fitted to lead in the matter of forest reserves, has introduced a bill in the Senate of the United States which provides for the conservation of our forests. Can we not rely upon those to support it whose interests are not directly involved in this question, upon those who desire other measures from our government which will directly benefit their several sections?

I believe we can, and I believe that those who appear before Congress asking for the necessary aid to irrigate their deserts, to widen and deepen and render navigable their waterways and their rivers, will not refuse to come to the aid of those who desire to make all waste places glad, whether by turning the channels of water courses, by replanting areas which have been mercilessly stripped of their growth, or by protecting the

forests which have not yet been sacrificed, and that they will not be unmindful of the truth that we are one country and a united people, and that what is for the advancement of one portion benefits all, and that, by unity and co-operation, all the things which the people of this great nation need and should have will be freely given.

Governor Willson.—This question of forestation is connected directly with the preservation of the water power, and all my sympathy has been with this matter of establishing these reservations, the Apalachian reserve and the White Mountain reserve in New Hampshire; and yet thinking it over, I see some very serious objections to it.

I think the water powers in most of the States will ultimately pay the whole expense of the State government. In Kentucky we have water power enough to run the whole South and pay the expenses of the Government—when we get to using it; and we shall get to using it pretty soon. I think those water powers belong to the States. Under the Constitution of the United States the United States Government has the control over navigable streams, and of course that means not only waters used by vessels, but where streams are used for the transportation of logs, and so on. My conviction is that the only right the Federal Government has is the right acquired under the clause of the Constitution giving it control over navigable waters for purposes of navigation only—except perhaps in such a case as we find in Montana where the Government owns thousands of square miles. There the government of course is the riparian owner. But in those instances it has been my view that the riparian owner had only the natural use of the streams, that that great power which comes from the force of gravity—all waters are drawn from the ocean to the mountain top and then go back by gravity to the ocean—that that God given power belongs to the people, and belongs to the people of the State in which Providence has located it, and the State owns it. The Government may regulate the use of the water for navigation; but so far as it is used as a water power I do not believe the National Government has a scintilla of right in it, and I stand for the rights of the States here, and that has been my earnest conviction about

it, to distinguish between three different interests—first, the interest of the riparian owner to use water for his household purposes, his stock, and so forth, which right naturally comes from his being located next to a stream; second, the right of the Government to control it so that its use for transportation purposes shall not be injured; and, third, the great right which rests in the people of the State, the right to this stream in the State for public use, for water supply, forest preservation, storage and power; and I believe in our resisting determinedly any effort of the National Government to take that away from our states.

Governor Carroll.—How would you handle border streams?

Governor Willson.—In those cases they have not interfered with us very much. I do not wish to attempt to go into this subject at any great length, but have just made the suggestion in order to start discussion. I do not think our deliberations will reach the greatest usefulness unless we take hold of these matters in an earnest way, and I am only saying these few words, first, because I am interested in the subject, and second, because I wish these conferences to be the most interesting meetings that are held in this country, and I wish all of these important subjects to be discussed fully by the Governors.

Governor Ansel.—What would you charge for the use of the water power on the navigable streams? As I understand it, you would charge for the use of the water power?

Governor Willson.—I had not gotten to that.

Governor Ansel.—I want to hear you on another point. We have a great many mountains and small streams coming down from the mountains that are not navigable. What right or power would a state have to charge for power from these streams?

Governor Willson.—The navigability of a stream has nothing to do with the State's right to its power.

Governor Ansel.—I agree with you.

Governor Willson.—Congress has nothing to do with it unless it is navigable. For all other purposes it belongs to the State.

As I said a while ago, I believe water power would pay all the expenses of the State Government. I have not studied the question very carefully and hesitate to waste your time without thinking about it further. We have, say, twenty or thirty streams that would afford water power; as soon as the transmission of water power into electric power or otherwise is perfected, that power would furnish all the power we would need in Kentucky for all time. My idea is the State could take charge of it and make the dams and lease the power for so much; or they could authorize private people to build the dams and transmit the power and give them a lease for a certain time, to expire at a certain time. Those are matters of detail. As I say, I have not studied the subject in detail and what I say I am afraid is rather crude. I have, though, given a great deal of thought to this idea, of the States resisting very strongly the continued extension of the National influence over all sorts of things. I am a very earnest Hamiltonian; I believe very earnestly in the National Government having the supreme authority in everything that is legitimately and properly within its control. I am an earnest United States man and spell Nation with a big N. But I am also convinced that our system checks having a dual government throughout the country, each state having its own sphere is one of the most valuable things for the continuance and preservation of our country, and I feel that we in the States do not oppose the Government, when we insist on its holding to its sphere and not interfering with our sphere. I believe in that just as earnestly as I believe in the Nation with a big N.

And so when each of these projects comes up—and I am always glad to take the other side for a moment, no matter how much I am in sympathy with my friend, Governor Quinby—when these projects come up I would rather Kentucky would buy such lands in Kentucky as he speaks of than that the United States should establish a reserve there.

I shall hesitate very long before I take a position against the thoughtful paper of Governor Quinby, and yet I have had a feeling that our State could better afford not to take any chance of the Government acquiring any right to control these water powers. and that we shall lose by it in the long run if the Government does, and that we shall unnecessarily mul-

tiply the Government agencies and the Government expenses. We have already seen a billion dollar Congress, which has almost appalled us. I have no way of forming the slightest idea of what a billion dollars means, but I know it is something awful, it is a night mare and a ghost. But with more extensions of the powers of the National Government, and if we go on and acquire all these forests, take them under National Control, I am afraid the day will not be far distant when we shall see a two billion dollar Congress, that we shall see two billion dollars as the amount appropriated for the expenses of the National Government, and I am afraid that that would be too much for any of us, that we should nor be able to stand it.

Dropping that line for a moment, I really believe that it is better for the States to buy these waste lands than it is to start a new Governmental agency.

Governor Quinby.—I want to say just a word or two in reply. I will be very brief indeed.

My good friend Governor Willson perhaps in a way misconceives my view. I am just as tenacious for state rights, I believe, as he is. Now that the old issues have disappeared I believe that I am as strongly for State rights as any man from the extreme South. I don't want the Government to have any one of the prerogatives of the State. I believe we are sovereign States and what we have belongs to us. (Applause) My idea is simply to have the Government—and it is possible that in our State the conditions are peculiar—have the power which we in the States have not, to acquire the White Mountain reservation and retain its attractiveness, its beauty, by preserving those forests which our whole country delights to visit. If they are denuded, as they are rapidly being denuded, the people of our country will no longer be attracted there. I do not want the Government to assume control of the streams. I want the individuals to own the water powers. Any man who owns a water power, or can buy one, I want him to have it. I am not in favor of centralization of the power.

Governor Ansel.—I want to ask you whether or not in your State you have any laws regulating the cutting of timber, that is the dimensions?

Governor Quinby.—So far as private timber is concerned, we have not, we have no such laws.

Governor Weeks.—We are discussing the able paper read by the Governor of New Hampshire, and it might enlighten us somewhat, as there is already a bill, I think, pending before Congress, introduced by Representative Weeks of Massachusetts (he is no relative of mine, by the way), which bill has been introduced several times, and I think this is the second or third time it has been up—I should like to ask Governor Quinby if he can give the Governors, in a word or two, the purport of that bill of Mr. Weeks, bearing on the paper just read, in relation to the White Mountain district. That has caused considerable discussion in Congress, and we must look to Congress for certain bills, under Governor Quinby's idea, as I understand it.

Governor Quinby.—Well, I do not want to take up any more time. I simply would say that Mr. Weeks' bill contemplates, as I understand it—and also Senator Gallinger's bill—an appropriation by Congress of perhaps a million dollars the first year, or two million dollars the first year, and so on, to acquire these reservations in the White Mountain region and in the Southern Appalachian range.

Governor Carroll.—Yesterday we heard a paper general in its character. From this on our papers are to be confined largely to particular subjects. I agree with Governor Willson that we should have discussed the paper yesterday. I am in entire sympathy with the movement in favor of uniform laws; but I am sceptical. Perhaps I will make that known to you a little later on. I think every Governor who is here will agree with me that it is a very slow process, that the chances for getting general uniformity as to any statute are very remote; and while I repeat it again, that I am in entire sympathy with the movement and hope to see the time when many of our laws may be uniform, I think we shall make serious mistakes if we fail to take advantage of the more advanced legislation that has been enacted by many States.

Just a little while ago public attention was directed toward insurance matters, and no one had more to do with bringing that about than our distinguished Governor from New York. Nothing by way of uniformity has been accomplished along these lines. Nothing in my judgment ever will be accomplished along these lines. I am speaking generally now. But

many of the States have taken advantage of the legislation which was enacted in New York and have adopted advanced laws with reference to insurance matters.

There seems to be a feeling here among many of you that there is a clash between the State and the National Government as to certain interests. That is not perceptible in my State, because, perhaps, of conditions that exist there; so that we feel little concern about it. All that we care to know is what rights the State has and what rights the Government has, in order that we may adjust ourselves to those conditions.

We have rather felt that anything that the Government would turn its hand to pertaining to our State was a great benefit to us, because the representatives of the Government were working in harmony with us and attempting to bring about results which we alone perhaps could not accomplish.

If you will permit me to refer in general terms to agricultural matters, our good Secretary Wilson, who comes from my own State and is a man in whom we take great pride, I believe you will all admit has been of great benefit to every State represented here and every State in the Union; and yet in his work he has not interfered in any way with anything that the States themselves might accomplish.

So I hope that rather than magnify the differences between the States and the general government we may minimize them and work in harmony and bring about the best results that can be accomplished.

The thing that interests me most here is not so much an attempt to draft a law which we might hope at some future date all the States would adopt, but that I may know what legislation has been enacted in your States and how it is working, in order that I may take back to my State that which will help me and my legislature when it meets at its next session.

It was suggested yesterday in Governor Hughes' paper that we might employ a secretary who should give all of his time to us and to this organization in order that we might have brought together, compiled, as it were, the laws of the various states pertaining to different subjects. I know that some States have already taken steps in that direction. If my neighbor from Wisconsin is here I think he will tell you

that they have in that State what is known as a legislative reference department, the object of which is to keep up with the advanced legislation in all the States in the Union and give a synopsis of the laws and determine if possible whether they are working well or not.

There is one subject that I am particularly interested in and which I recommended to our legislators at their last session, and that is the subject of a public utilities commission. That kind of law will never be enacted without opposition, because there are so many interests against it. It takes the best effort that all of us can put forth in order to bring about legislation of that kind, and none of us ought to make mistakes, and so we want to know how it is working in New York, how it is working in Wisconsin, and how it is working in other States, and we want to know how it is working in every state that has adopted an act of that kind. That is worth much more to me than it would be to have you lay down before me a uniform law in regard to it and tell me nothing about whether it is going to prove satisfactory or not after it is adopted.

So I believe the work of this Conference ought to be that of informing ourselves of what is going on in our neighboring States, and how successful they are with different laws they have enacted; and so I say, not disparaging or criticising any paper here, that we shall not hear a paper of more general interest than the paper presented yesterday by the Governor of New York. It touched the whole scope of our work here, in my opinion.

I do not agree with my friend from New Hampshire that private interests ought to own the water powers, although I am willing that private interests should own them after we have legislation controling that power and regulating it. I do not want private interests to get possession of our streams if we have no legislation of that kind, because that would mean trouble for us in the future.

Governor Fort.—I quite agree with the speech of Governor Carroll, and I am only on my feet because during the discussion, he asked the question "How you would control interstate boundary streams?" It seems to me that the answer to that is found in the statement of Secretary Root at the Governors' Conference, held at the White House, when he discussed that

provision of the Constitution of the United States which provides for agreements between two or more states with the consent of Congress.

In the case of two States having a boundary river there would be no difficulty in covering this point we are now discussing. But I think personally I would like to go further than that and say that it would not be necessary to have any such agreement even between States. If it be a navigable stream which is a boundary between two states, of course Congress has control over navigation, but as I understand it it has control over navigation only, has no interest in, or right, at least, to control the waters of the stream. I have always understood it that upon streams which lie beyond the point where the tide ebbs and flows the riparian owner owns the land to the middle of the stream, that he owns the use of the water and only the use of the water to the extent necessary for his own purposes, be that what it may. But he must return the water to the stream for the benefit of the owners below in case he shall use it for any purpose, except so far as he uses it in such a way that it cannot go back to the stream, if that character of use be necessary in his legitimate business.

In my State I am not sure but what we have a little different rule with regard to riparian lands from most of the States. We hold that all land lying between high and low water mark belongs to the State, and we sell it and we have a revenue from it. Over five million dollars up to this time from this source has gone to the permanent school fund of the State and can be used for no other purposes than school purposes. If that land had been sold at what it was worth we should have twenty-five million dollars in the treasury to-day for school purposes as a permanent fund rather than five million dollars.

We allow no one to build a pier or a dock, or to dike out in front of his premises in any way except with the consent of the State at points where the tide ebbs and flows. You must buy and pay for such land in our State. I know that is not the rule in New York and some other States.

The Court of Errors and Appeals in my state has lately held, as to waters, that the State owns all the surplus water within the State and that the water cannot be diverted for the purpose of merchandise. Mr. Justice Holmes, writing the opin-

ion of the Supreme Court of the United States, in the case of the Attorney General of New Jersey against the Hudson Water Company, sustained the opinion of our Court of Errors and Appeals, holding that no surplus water from any stream within the State could be transported out of the State for merchandise purposes except with the consent of the State. We passed a law in New Jersey prohibiting its transportation out of the State in any way.

Congress as I understand it, has nothing to do with these streams except as to navigation. True, it was held by Mr. Justice Bradley in the Bridge Case (in the matter of a bridge over the Arthur Kill separating New York and New Jersey) that where Congress passed a law in interstate commerce permitting a bridge to be put over a stream, that even though the State owned the riparian land, the abutments of the bridge could be put down without the consent of the State because it was in interstate commerce. But if there be any private right in it, of course they must make compensation just as any other person taking the land. But the State could not enjoin them from putting the abutments of the bridge there. And he held—in the same case—that Congress has no control of any kind over the rivers of the State, even boundary streams, except in the matter of navigation. I do not think there is any trouble on this proposition by way of any agreement between the States under the Federal Constitution, if two States desire to make an agreement; nor do I think there is any doubt that each State on its own side of a boundary stream may control the use of so much of the waters as it may legitimately take from its own side of the river and regulate that use as between its citizens and the State.

Governor Carroll.—May I ask whether or not you are familiar with the action of Congress in relation to permission to build a dam at Keokuk?

Governor Fort.—I am not as familiar as I would like to be and I wish you would discuss it.

Governor Carroll.—I am not capable of doing so.

Governor Fort.—Is it claimed they have no right to put a dam there—can you state the proposition?

Governor Carroll.—I can tell you about the location of the dam, but I have not looked into the case.

Governor Fort.—I understand there has been some question with relation to putting dams across streams; as to whether Congress has the power to do it; but there has been no decision of any court on the subject so far as I know, and I do not think we ought to consider anything settled until the Supreme Court passes upon the question as to what power Congress has.

I want to say another word with reference to forest reserves within States. I do not understand that Congress can put a forest reserve in the State of New Jersey by its own act. I do not suppose Governor Quinby meant that. And I do not think Governor Willson meant to convey such an idea. Of course in the Territories, where Congress has control, as in Alaska, where Congress has an absolute right, it may set aside forest reserves or any other reservations it may wish; and when it makes a State out of such territory, it may reserve certain land for forest reservations; or as it has done in many cases, when it has created States out of Territories; turn over to the State certain lands in trust for the proceeds to be used for schools and other things. But I have not any objection to the Nation owning land for forestry purposes by act of Congress, if the State sees fit to cede such land, precisely as we cede a post office site or an arsenal site or any other Governmental site.

I agree with Governor Willson on this National proposition. There is no one who believes in a Nation with a big "N" more than I; but at the same time when it takes what belongs to the State, it must, so far as I am concerned, take it with the consent of the State.

In my State the forestry proposition and the water power proposition are acute, and in thickly populated States it is going to be more acute; and the control of the waters of the States both for power and for portable purposes is a most important problem; the most important probably, before the public to-day.

As to power question, if the State of New Jersey should take over, say 50,000 acres of land lying partly in New York and partly in New Jersey, under a joint commission, as I suggested in my message to the legislature, the purpose would be to erect dams, reservoirs and the like, at the head of streams.

They are not navigable streams, but streams where the riparian owners own to the center and have the use of the natural flow; in such case the State may take, without the consent of the riparian owner, all the surplus waters. The owner of the ripa has no right in the surplus, no right in the flood waters; he has only a right to the average flow in the stream. That is the language in all the decisions of the Courts. The riparian owner, therefore, cannot object. Even though we pay nothing for it, if we build a dam across a great place that lies between two mountains and store very large quantities of water, he cannot object to that, provided we do not interfere with the flow of the stream on beyond—the average of the natural flow.

But that is going to give us large water power as well as large quantities of portable water to dispose of to the cities; and I want to see my State—and I think we all want to see our States—take hold of this water problem in the broadest way. I agree with Governor Willson that the time has come now in our day and in our time, for the States to control more of these things than we have been controlling in the past, and to take the water power and to take the water.

In my State the condition of the water situation is simply this. If we do not take this matter in hand, and put these constructions up, and take control of the waters, one city will get control of one large tract of land with its water supply, and another, another, and so on, until by and by some of the cities in the State will be without any water supply at all, unless they can get water from some other city or a private corporation that controls water and can dominate the situation.

Let the State take control of all the water. Let it dispose of it to municipalities at the cheapest rate possible, less than they can afford to construct works and supply water for, and in that way we shall have conserved the waters of our respective states and we do not need any act of Congress to do it.

If Congress wants to help us in this direction and the State is willing, that is very well; but there should be no division between the State and the Nation on these questions, and I do not understand that the Government claims any right in the waters of the States.

I also agree on this forestry proposition; I am a good deal like Governor Willson in regard to that.

I want to see the forests preserved. We have a little State, but we have bought within the last two years, since I have been Governor, between 10,000 and 12,000 acres of forest land, with small trees on the land. Some of the timber has been cut off. We are going to replant it, and we are ready to buy a great deal more. I believe it is necessary for the State to do this, and it is a great thing for the State that we should do it.

The forest problem is an important one. The water problem is an important one. If the different states of the Union get together I do not believe we need a general law. I do not see why we need any uniform law with respect to forestry in each State; it seems to me that each State should take care of its own situation.

Governor Weeks.—Have you a forest commission?

Governor Fort.—Yes.

Governor Ansel.—I want to ask you whether the State is selling any water to private corporations?

Governor Fort.—No, our State is not selling water to private corporations. The State of New Jersey some time ago, back in the days of Alexander Hamilton, granted to a company in which Hamilton was interested, the right to use certain water for useful manufactures, and those rights were transferred to others, finally to the East Jersey Water Company and they furnish water to the different municipalities, from the headwaters of the Passaic river.

Governor Weeks.—I would like to ask another question. You provide in your charters now for private corporations that want to go into the water business. Do you charge them a royalty?

Governor Fort.—No, only the tax on corporations. And I want to say, so far as I am concerned, that I recommended last year that we condemn all private rights and take all the waters for the State. Some years ago we used to be giving away these rights, and the time has come for us to stop it and to hold all of these things for the use of the people in the name of the State. (Applause)

Governor Comer.—Mr. Chairman and gentlemen, I have listened to this discussion with very much interest. Those of you who attended the last conference of Governors, held at the White House, will remember that President Roosevelt at that time declared that the Government does own an easement in the water power in addition to the easement in navigation, and in Alabama I think that power is being exercised to a certain extent. In other words, where dams and locks are being constructed the power to be developed is being leased by the Government. At the last meeting, as some of you may remember, I took issue with the President on that point. I have prepared a short paper dealing with some of the subjects that were touched upon at the last conference of Governors and in this paper I have discussed at some little length this question of water power.

As regards the water power of Alabama, we have more power in Alabama, more water power running loose, than in any other State except possibly Governor Hughes' state. I see a Governor shake his head. We have more water power at the Mussel Shoals than all Kentucky and Tennesee put together. We have an immense amount of water power on the Coosa River.

We say that that power belongs to the State. As I understand it, you agree with me in that proposition.

Now I will call attention to a little piece by President Taft a few days ago, in which he, alluding to the Government's claim of owning the power, speaks of it belonging to the riparian owner, and asking how the Government got rid of it. I believe you will recollect that part of it. There are certain riparian rights which have been recognized heretofore—I mean previous to ten years ago. The riparian owner, with certain concessions or certain rights, could own the water power and put it in a trust like any other property. That is the case, I believe, in Canada to-day.

In Alabama, as Governor Fort says, this power belongs to the State and the State should own it individually. I don't know the situation in other States, but I think it would be a very long time before Alabama would be able to develop the Mussel Shoals or the Colbert Shoals; and where you would draw the line in the matter of the size of the stream as to when

the State owned it and when the riparian owner owned it, I don't exactly know.

In this discussion I assume that the Government has taken charge of it against protests, mind you—because down South, where we have not waked up to the belief yet that there is not some integrity in the State, and where we still believe in the rights of the State and in the State maintaining all the powers that they have under the Constitution, the Government has been taking charge of the water-ways. Take the Mussel Shoals, they are building locks there for the purpose of developing navigation. We are glad to see the navigation developed, but if it is going to carry the power also, then why not let the Government when it builds a lock and dam build it not only with reference to the navigation, but also with reference to the power to be developed. Presuming, still further, that the present tread of opinion will continue to develop along the same lines, why not develop this power and run it just like they do in the arid zone in the case of irrigation, and rent that power?

These are simply suggestions that I have discussed at greater length in the short paper which I have prepared.

If it is left to the States, we are not all of us ready to turn over our rights to the Federal Government.

We have just heard that New York has just issued one hundred million dollars of securities for enlarging its canals. We cannot do that. We have got these great water powers that are going to waste. We have got to go to corporations to accomplish anything, or else to the Federal Government. The private owners cannot do anything; they haven't the money, and I don't think the State is going to do it.

And so it seems, notwithstanding the protest that we heard this morning against the federal Government's assuming anything that properly belongs to the State, the trend seems to be in the way of the Government doing this work; and if that is true, I say, why not let the Government put the dams and locks in and develop the power, which they can do at a comparatively modest cost, and then lease that power? Anybody can see at once that if they do that you will have the power for industrial purposes along the best and cheapest line that you could get.

Governor Willson.—I do not insist at all that we should have a rental for everything. The State may be paid by the development of its manufacturing industries. But what I do say is that the State should hold its right to the power; giving to the Government, perhaps, on such terms as it sees fit.

Governor Comer.—I say it would be wrong for the Government to lease the development of the power, because in spite of everything that would form a trust right there.

Governor Weeks.—Has your legislature passed on that?

Governor Comer.—No; we do not pass on that until the Supreme Court passes on it.

Governor Willson.—I don't like your appropriation of the Tennessee River to Alabama, because we own about three quarters of it. You have got the shoals, and we have got everything that is worth anything for navigation.

Governor Comer.—Your ownership in the Tennessee River goes to the matter of its navigation, and we want you to get behind the Government and have the navigation improved. But up above you are the falls, and there is where the power is, and you have no interest in them. I have never heard yet of anybody using the water that has gone below the dam, and that is below the dam now.

Governor Willson.—I am afraid you are away up in the air on our interest in the Tennessee River.

Governor Comer.—You can see at once what fineness your proposition would reach if you carry it back along the line of what you have outlined, and it would bring trouble, and we all know it.

Governor Draper.—I want to say a word in sympathy with what was said by the Governor of Iowa, and it seems to me that this discussion brings out very plainly to all the imporance of what he said, that uniformity in many respects is practically impossible, but that information is extremely valuable.

I have been very much interested in this discussion of forestry as it applies to water power, because of the different conditions which exist in different sections of the country. The water powers in Massachusetts are pretty much all taken up. They are owned, so to speak, by private individuals at

the present time, This does not apply to the surplus flow of the rivers, but the power is in use.

I was very much struck and impressed with the remark of Governor Willson of Kentucky, about the State going out and buying these lands, and I thought of the old story of Daniel Webster of olden times, when he was dining with some gentlemen in Massachusetts and he was talking about some great national questions and somebody suggested the national debt as something that would interfere and Webster spoke up, "The National debt; what's that? I will pay it myself." (Laughter).

So, of course these things may be bought in some States, but, as Governor Comer has well said, they cannot do it in all the States, and for Massachusetts to undertake to buy the rights of the owners of the rivers would be a very serious question.

But I also believe that the State, when it is necessary, can do it, and can sell its water to people, and Massachusetts has done that within the last few years in a very large degree.

We went out into the center of the Commonwealth of Massachusetts and took the credit of the Commonwealth to spend $30,000,000 in condemning land, making reservoirs and constructing water works which we sell to the cities of the Commonwealth at cost; and the amount of that debt today, which we call our metropolitan debt, amounts in the water works and the sewerage systems that are connected with them, to over $60,000,000; and the various cities of our commonwealth have the right to that common service by paying the interest on that debt.

Governor Fort.—It is carrying itself, is it?

Governor Draper.—Yes, substantially. Last year there was only an increase in the total debt of about $100,000. The interest was taken care of by the payments made by the individual cities.

Governor Ansel.—At what price do you sell water?

Governor Draper.—At cost. And each city makes a profit on it. The State simply has loaned its credit and paid for this entire improvement, and then the cities owe the State.

Governor Carroll.—You do not lease it to individuals?

Governor Draper.—Only to municipalities

I simply spoke of that question and these others because Governor Quinby and I are similarly situated in our States; these water powers, these rivers, are all occupied, the powers are built, they are running great industries. How is the State going to take possession of that? There is not money enough in the State to take possession of it.

Therefore, you have got these different questions to consider from a different standpoint, and I congratulate these Governors of these great States that have got these enormous undeveloped powers, and were I in their places I would do everything I could to see that they are conserved, so that the State shall get some interest; and where we are differently situated, we have got to contend with different conditions. Therefore the point brought out appealed to me strongly, that while we might not be able to get absolute uniformity, I hope from the sorrows of New England the Governors of some of these other great States will get lots of money.

Governor Prouty.—What are you doing in Massachusetts with regard to forestation?

Governor Draper.—We have a State Forester, and we are making an annual appropriation for his benefit and, further, an annual appropriation of a few thousand dollars to buy as much land as we can which has practically no value. I believe we pay only $10 or $15 an acre as the limit; and we as a state are planting on this land various kinds of trees. I think last year we planted something like 5,000 acres. I think the coming year we shall do a great deal more, and we are having men appointed under the State Forester in every large town in the State. I recommended this year that no appointment be made by any town or city in the State of a man to have charge of this forestation whose nomination should not be approved by the State Forester. In other words, that no State politician should be appointed, but, on the other hand, a real forester who would work in harmony with our State Forester for forestation. I think that under this procedure we shall have better work this year.

Governor Weeks.—You make an appropriation for that work, do you?

Governor Draper.—Yes.

Governor Weeks.—To be expended through the State Forester?

Governor Draper.—Yes.

Governor Hughes.—It is quite evident that in our discussions we shall learn that few can serve as examples and many can serve as warnings, as we consider our different state experiences. Now, with regard to this subject of forest preservation there can be no divergence of opinion as to the vast importance of conserving the forests, and the question is how can they best be conserved. I will not enter into a discussion of the question of the extent to which a State should be ready to cede part of its territory to the Federal Government in order that the Federal Government might aid in the work of preservation. I conceive that to be a matter of State policy with which those entrusted with the conservation of its interests are best qualified to deal; but I do conceive it to be important that the State, so far as it can, should own its own forests and maintain its own reservations.

There are three lines, I think; along which this work of preservation may be promoted. The first is legislation restricting waste on the part of private owners.

The police power of the State has been held to extend—notably in a decision in Maine—to a regulation of such use of private forests as will not deprive the owner of his property but provide for such just conserving measures in its use as will take care of his interests and the general welfare at the same time. The States generally, so far as I am advised, have not entered upon such legislation. We do not know that the view that has been taken in the case in Maine would be sustained in all our highest courts of appeal; but it has a very sound basis, it seems to me, in reason, and it points to State executives and State legislatures a line of action of great value to the State; and assuming that they can find in the decisions of their highest courts a basis for their action—because the construction of the State Constitution will be found to be involved in such questions—it will be of the highest value to the State if appropriate action of that sort is taken.

The second method is to create a state reservation. In the early days in New York one of the most far sighted men that ever held the Governor's office, DeWitt Clinton, pointed out

the sacrifice that was being made of our New York forests, but it was practically sixty years before anyone paid any attention to the warning.

If we accomplish nothing more than to create a disposition to heed warnings, we shall do much in these conferences. DeWitt Clinton, even when New York was so largely forest covered, saw the danger to our resources in allowing the work of lumbering to go on without restriction. But down to the days of Grover Cleveland, the State was actually selling out the holdings that came to it through unpaid taxes at nominal sums, parting with property which we have had to buy back at a heavily increased cost, Grover Cleveland called attention to the matter, Governor Hill dealt with it, and every Governor since has made recommendations regarding it, and we have established a policy of preserving the forests through the creation of a State reservation. We have nearly 4,000,000 acres of forest land in our Adirondacks and Catskill parks. The State now owns more than 1,600,000 acres of these lands and we are extending our holdings.

In my last message I recommended that as we had decided upon this policy we should execute it as rapidly as possible, and instead of running the risk of increased outlays by delay and also by reason of waste incident to the course of action taken under private ownership, that we should at once use the State's credit, if the people consent under the constitutional provision for a referendum, and thus acquire without delay all the forest lands that we think we should hold, and hold them for the benefit of the State.

So far as the State can, it seems to me that the State should own absolutely and control such forest lands as it may deem essential to its future prosperity, and it should never put at the risk of greed, aiming simply at temporary gains, the future prosperity of the entire Commonwealth. The only way to protect that, I believe, adequately, is through a public reservation.

Then we have, as another line of action, the matter of reforestation and scientific methods of forestry. We went so far in the State of New York that we tied our own hands. We were so indignant at the methods that had been adopted, methods which prudence did not at all commend from the

standpoint of private ownership, methods which were excessively wasteful even from the standpoint purely of private interest, that the community voiced a protest in a Constitutional amendment, In 1894, an amendment was adopted which provided that our forest lands which the State held, or should acquire, should be kept forever as wild forest land and that the timber thereon should not be sold, removed or destroyed. The result is that the State cannot even remove fallen timber; it cannot care for its own property. Under that Constitutional provision we hold as wild forest all that land, with all the danger of fire which is the result of lack of proper care, and with no opportunity to get the returns which by proper forest culture we might get to reimburse us for our outlay.

Many times we have had our attention called to this situation, but each time the grasping hand behind the proposal to change the provision has been detected by an alert public, and the people have been so fearful that, if that barrier were broken down, in some way through loose administration, through favoritism, through political abuses some private interest would get control of the forests and reinstate the old methods, that they have not welcomed so far any proposal to change this constitutional restriction. I hope we are coming to a time when the public conscience will be so keen and the average man will be so insistent upon honest government that we can trust the administration of the State of New York with the powers it ought to have. And I trust we will some day have provision for scientific forestry in New York by which we can get the benefit of the normal yield that we ought to get, and by which we can provide with proper care for our great forest possessions.

We have been making some progress in reforestation. We have four or five State nurseries in which we grow trees to be set out. We plant a considerable number of trees, making a relatively small appropriation for this purpose. It ought to be largely increased if our State income could stand it.

We have also begun in a small way to encourage tree planting by private owners, and I think that is important. We have just begun that policy recently. We have been selling slips,

trees, to private citizens at cost and encouraging the planting of non-arable lands with forest trees. They cost very little. We have been importing a very large number of trees from abroad in order that we could aid in reforesting.

And through these lines of legislation, so far as the courts will sustain the exercise of the police power, of State reservations, and of proper forestry methods and reforestation, we can take care as States of our great forest interests. And in saying that I am not at all disparaging such efforts as may be made for the establishment of great public parks where many States are interested, or where the States desire to cede their interest to the National Government, although I do think that the State should be as proud of its forests as a bride of her jewels, and that she should hold her forests as her most sacred possession and develop them for her own just interests or secure proper agreement with other States, if the forests extend over the boundary, and can be properly looked after in that way.

Now, with regard to water power. Of course, as Governor Draper has said, the differences in our situations as States are very marked when we come to consider the question of water powers, and we can only tell of our experiences and of the policy which we think should be adopted, where there is freedom to adopt it.

I believe that so far as the water powers of a State are undeveloped the State should control and own them in perpetuity. I do not believe in letting the sources of industrial energy, so far as they can still be controlled, pass into private hands. I believe in having these sources of industrial energy, all the more important because of the facilities for transmitting power, facilities which are constantly being developed, kept in the hands of the People. These constitute a basis of prosperity, a basis of independence and industry which should be most carefully safeguarded, and I think it is possible to have plans of improvement by which water powers can be developed so as to promote private industry, while at the same time the cormon right can be protected. For we want the development of private industry, The conservation of the base of industry is no impairment of private industry or initiative. It simply maintains that which, like air and water itself, is an essential

condition of every great enterprise. The question is whether the essential conditions of enterprise shall be held and controlled by the few and others placed at their mercy, or, so far as they are still available for public control, shall be held in the interest of all the people.

We had two or three years ago in New York a suggestion made by which we should have a thorough consideration of the undeveloped water powers of the State. Pursuant to a recommendation made in my first message, a commission which we had in the State of New York was empowered thoroughly to study the State situation, That I think is the first step. The State should procure a thorough, technical, expert study of its own conditions. Of course there are many legal questions to be considered. Matters have not yet reached the point at which a final conclusion can be stated as to many of the suggestions made here this morning. The Courts will have to deal with controversies that will inevitably arise. But it seems to me that no State can really tell what it can do or what it ought to do without having at first thorough expert investigation of its water powers, how far they are undeveloped, and what is practical in the way of development.

We had, as I say, a Commission authorized to undertake this. They got the best engineers in the country, and we have had the spectacle of the men who are commonly employed by the wealthiest corporations, devoting that same skill and ability to devising means to protect the people of the State, and we have formulated programs of development which they assure us are entirely practicable.

Of course they involve many technical considerations upon which I am not competent to speak. They tell us, for example, that by proper treatment of certain of the headwaters in our forest reserve we can tremendously increase our available water power, that we can hold it under proper control, that we can establish a sinking fund paying our carrying charges, and ultimately the principal cost and have at a very low rate of charge a considerable income to the State over and above the sinking fund and maintenance charges. They tell us that these dispositions can be made without injury to our forest possessions.

It will require the creation of a state debt, that is a lending of the State's credit, and it will require very careful consideration of any proposed legislation and of any proposed constitutional amendment, to see that our forest reservation is not impaired through the guise of water storage schemes.

When a State has undeveloped powers it is not likely that they will be developed on as comprehensive a plan or with the assurance of all possible benefits to the people, if the matter is left to private initiative, as if the State itself undertook the development and control. I do not at all believe that the State should engage in this development merely for the purpose of parting with the ownership after the development has been made. There are several points involved in this policy. First the comprehensiveness of plans that is possible under State control. Second, the reservation of perpetual State control. And then finally we have the leasing of privileges, or the assessment for benefits through which a proper return can be had to the Stat .

I believe that in the State of New York we are on the eve of a most important development and that in coming generations, fifty years from now, nothing which at this time is being done in the State of New York will be regarded as of greater importance than the measures under consideration for the development and State control of our water powers.

The suggestion I have to make is to procure through investigation, scientific, expert inquiry, so you will know exactly what you have to develop, what the improvement will cost, what return you can get, and then to secure ownership in behalf of the people so that no one will be able to monopolize the sources of industrial energy. (Applause)

Governor Fort.—I move that the hours for meeting be at half-past two this afternoon and again tomorrow afternoon, and at half-past ten o'clock tomorrow morning.

Governor Hadley.—I second the motion.

The question was taken and and the motion was agreed to.

The Chairman.—We will now hear from Governor Fort.

STATE SUPERVISION AND REGULATION OF QUASI-PUBLIC ENTERPRISES

Governor John Franklin Fort of New Jersey

Let me say at the beginning of this paper that in my State we have no public utilities commission. We have a railroad commission, which has merely powers that are suggestive, and very little, if anything, that is regulative in any way, I have not discussed in my paper the workings of these commissions, because I am not sufficiently familiar with the subject to discuss them; nor have I discussed here why we have not such a Commission in New Jersey, nor why other States that have not such commissions do not have them. Probably the Governors of other States could tell the reasons better than I. We all know. I have confined myself, therefore, almost entirely, to stating in a very brief way, the relation of such a Commission to the State and the law, as I understand it to have been decided in the Supreme Court of the United States and elsewhere, as to the powers which may be conferred upon such commissions. Of course those I shall mention are not the only powers, which are undoubtedly possessed by utilities commissions.

The relation of the State to public service corporations created by it has been the subject of much discussion during the past few years, and will probably continue to be for some time to come. And yet it is difficult to understand why any serious controversy has ever arisen over the problem.

A corporation is the creature of the State. Expressed in another way, it is simply an agency of the State having conferred upon it certain of the powers which the State may grant, with the authority to exercise those powers in the way the statute creating it provides.

The legal principles controlling the State in its creation of agencies for the supervision and regulation of public serving corporations would seem to be so thoroughly settled as not to be open to serious debate.

In Atlantic Coast Line Railroad vs. North Carolina Corporation Commission (206 U. S. 1), the Supreme Court of

the United States state the principle that "railroad companies, from the public nature of the business by them carried on and the interest which the public have in their operation, are subject as to their state business to state regulation; which may be exerted either directly by the legislative authority or by administrative bodies endowed with power to that end." In this case they sustain an order of the North Carolina Commission, although the carrying out of the judgment may require the exercise by the corporation of the power of eminent domain, and although it will also result, if carried out, in some small expense or loss; and hold that neither of these facts, though established, furnish a defense to a refusal to carry out the order.

The commerce clause of the Federal Constitution unquestionably gives ample power to the Congress to supervise and regulate all interstate traffic.

The trend of the decisions of the Supreme Court of the United States have all been to enlarge and extend this power of Congress over the subject, until it is now so firmly settled that it may be deemed to be almost, if not fully, an arbitrary power.

The common law doctrine of the police power, which inheres in the sovereignty of each State, irrespective of any Constitutional provision in any State, is broad enough to cover all the authority for supervision and regulation which is essential to the protection of the people of a State in the regulation of public serving corporations within the State.

So long as the power exercised by the State is only to regulate and not to destroy or confiscate, it is within the police power.

In one of the earliest cases in the Supreme Court—that of Stone vs. Farmers' Loan & Trust Company (116 U.S. at 331) a State was held to possess the right to confer upon a State railroad commission the power to compel the doing of the following things:

1. To furnish the commissioners with copies of its tariffs for all kinds of transportation.

2. To post in some conspicuous place at each of its depots the tariff approved by the commissioners, with the certificate of approval attached.

3. To conform to the tariff as approved without discrimination in favor of or against persons or localities.

4. To furnish the commissioners with all the information they require relative to the management of its line, and particularly with copies of all leases, contracts, and agreements for transportation with express, sleeping-car, or other companies to which they are parties.

5. To report all accidents within the limits of the State attended with any serious personal injury.

6. To make quarterly returns of its business to the commissioners, which returns shall embrace all the receipts and expenditures of its railroad.

7. To provide at least one comfortable and suitable reception room at each depot for the use and accomodation of persons desiring or awaiting transportation over its road.

8. To keep at all times in such reception rooms a bulletin board which shall show the time of the arrival and departure of trains, and when any passenger or other train transporting passengers is delayed, notice of the extent of the delay and the probable time of arrival as near as it can be ascertained.

To these were added in the same case, the right of a State to reasonably limit the amount of charges by railroad companies for transportation of persons and property within its jurisdiction; and this right, it is held, cannot be granted away by its legislatiure, unless there are words in the charter of the company of positive grant.

By another decision of that Court the rate making power was held to be a legislative function, to be regulated by the State or a subordinate body to which the power has been delegated; the only limitation upon this power being that the rate shall be reasonable and in no sense confiscatory (112 U. S. 1). And whether the rate be reasonable is to be determined upon the question whether or not there is a fair return on the investment of the stockholders in the corporation. In the Gas cases so well known, a rate that would permit a return of six per centum on the investment was held to be fair and not confiscatory.

Other things which the Courts have held within State supervision and regulation are:

(A) That the corporation shall furnish such service and facilities as shall be reasonable and such appliances as are safe and adequate for the transportation of passengers.

(B) That it shall construct and maintain and operate upon reasonable terms switch siding connections for the convenience of shippers.

(C) That it shall not directly or indirectly make any special rate, rebate or the like as to passengers or freight for any person.

(D) That it shall not make discriminations as to like kinds of property between a long and a short haul.

(E) That in the distribution of cars for the transportation of products it shall treat all shippers on an equality.

(F) That it may require reasonable connections at junctions of competing roads and enforce them, even if such junctions entail a loss.

(G) That it may limit the output of securities and the rate at which they may be sold.

(H) That it may inhibit over-capitalization and all forms of exploitation of railroad securities.

(I) That is may even require interstate trains to stop at intrastate stations, if the necessity is obvious or the delay not injurious to interstate commerce. (203 U. S. 335).

Without citing further specific power in the State, it is apparent that the authoritative right of the State over its public utilities companies is ample for the protection of the people.

The principles here stated, and the powers shown to inhere in the State, not only apply to railroad corporations, but, with equal force to street railways and the regulation of gas, electric, telegraph, express and other like public serving companies. It is for the regulation of this latter class of quasi-public companies that the most urgent need exists for State public utilities commissions.

The public serving companies, in most of the States, are practically without supervision or regulation of any kind; save to such extent as a few statutes and municipal ordiances may prescribe. The character of the service and the rate of their charges, differ in the different cities and towns within the State. There is no uniformity whatever, and the

exactions, where no State supervision or regulation exists, are based upon the mere whim of the serving companies.

The necessity for the supervision and regulation of public servng companies, by the State, will become more and more acute, as the population and industrial interests increase. A wise officer of such companies should be as quick to see the truth of this statement as the public official.

The great difficulty up to this time has been secure any kind of co-operation between the companies and the State. The effort has been, by all sorts of methods, to make it appear that supervision and regulation were not necessary and were not desired by the people, and the people have failed to appreciate, to the full, the advantages which would accrue to them though such a commission. These conditions are now changing. The far-seeing corporation official now recognizes that public sentiment demands regulation by the State, in the intersts of the people, of all the companies operating under public franchise for public service and private gain.

If the managers of such companies would only see the true relation which they occupy to the people, much of the difficulty in solving these questions would be removed. The Supreme Court of the United States has declared that the public power to regulate, and the private right of ownership by public serving corporations, "co-exist and do not the one destroy the other." If directors of public serving companies could only be brought to realize that they have an equal responsibility to the State, to promote the public interests, with that resting upon them to care for the interests of the stockholders, much, if not all, of the objection to State regulation would disappear. In fact, if directors were to truly regard the joint obligation of their public and private relation to their trust, possibly no commission would be needed at all.

The problem is not an easy one to solve. There are questions of difficulty in all directions. State supervision has its limitations. It should not be extended to practically amount to government ownership. Nor should it assert actual control in any way. It should be strictly confined to correction in management. The power of initiative in an administrative State board can only cause embarrassment. The power of revision and review will answer every purpose. When no

wrong exists no need for supervision can be found. Directors of public serving companies should be given a free hand to manage and direct their corporate affairs and business. Only when complaint is made of the fairness and justice of their acts, is there either right or reason for State interference, even for regulative purposes. Let the statutes define, with precision, the powers and obligations of directors in administering their trust; and the Administrative Board of the State be given authority to meet and correct any inequalities or injustice which directors may permit or encourage.

Companies engaged in interstate trade or commerce find much embarrassment in the divergent powers of the various State Public Utilities Commissions. This is not surprising. The complaint as to this condition is just. Business cannot be conducted with any sort of convenience or success with forty-six separate and divergent State Boards to deal with. Uniformity in the statute laws, conferring powers on these State Commissions, should be striven for and attained, in so far as possible; and it does not seem improbable that this uniformity can be obtained.

Business cannot be worked out, even in its natural development, under a vexatious system that requires the inquiry and study into and compliance with, forty-six divergent State statutes. Under such a system an act, which is lawful in New York, New Jersey or Pennsylvania; in Maryland, Virginia or Ohio may be unlawful. These are days of great concerns. Almost every business of importance is not only State-wide but interstate. To meet it National incorporation is suggested. How far this is practical or constitutional it is not possible, within the confines of this paper, to discern. But whatever may be said upon the wisdom or legality of Federal incorporation, there can be no room for controversy as to the need for uniform legislation in the several States relative to public utilities commissions. Probably there is no subject, for uniform laws, more essential to the development of the industrial property of the country, than those which relate to the intrastate regulation of interstate business enterprises. In the failure to recognize this fact, lies the greatest danger to the continued supremacy of the States; even in intrastate affairs.

All thoughtful men see that the temper of the people of the country is such that they mean to have something to say in the matter of corporate regulation. He is an unwise man who fails to see this sign of the times. Nor do I think that the managers of railway and public utility corporations believe that proper regulation, through State or National Commissions is either injurious or objectionable. Such Commissions, properly organized, can be made helpful and promotive of public confidence and support.

The power to regulate inter-State commerce, by Congress, is unquestionably nation wide. It is doubtful if our fathers saw, when they adopted the commerce clause of the Federal Constitution how far-reaching it was, not estimated how vital it was to become. Even to-day it is questionable if we fully appreciate its possible scope . It can only be finally determined by judicial construction.

The late message of President Taft, in its recommendations on Federal incorporation, suggested a power in Congress of a very wide range, when he said:

"The regulation of interstate and foreign commerce is certainly conferred in the fullest measure upon Congress, and if for the purpose of securing in the most thorough manner that kind of regulation, Congress shall insist that it may provide and authorize certain agencies to carry on that commerce, it would seem to be within its power. This has been distinctly affirmed with respect to railroad companies doing an interstate business and interstate bridges. The power of incorporation has been exercised by Congress and upheld by the Supreme Court in this regard. Why, then, with respect to any other form of interstate commerce, like the sale of goods across State boundaries and into foreign commerce, may the same power not be asserted. Indeed, it is the very fact that they carry on interstate commerce that makes these great industrial concerns subject to Federal prosecution and control. How far as incidental to the carrying on of that commerce it may be within the power of the Federal Government to authorize the manufacture of goods, is perhaps more open to discussion, though a recent decision of the Supreme Court would seem to answer that question in the affirmative."

This will almost "shock the conscience" of the strict constructionist of earlier days. But we are facing these questions and the States will need to recognize the fact, that uniform legislation, on many subjects, especially relating to that of corporate organizations, in business, is essential to prevent conditions which may cause Congress to pass acts, which, if sustained by the Supreme Court, may impair the supremacy of the State in the matter of corporate organizations; and practically destroy any control over the right to do business in one State, by the corporations of another, under the doctrine of comity between the States at present so well understood. For myself I incline to the broad view stated by the President, but earnestly hope that the wisdom of the legislatures in the States, may postpone the necessity of testing it under legislation by the Congress. The true relation of the State to the public serving corporations is not a matter for solution in a day or even a year. Great problems in governmental affairs require time to work them out. Our natural enthusiasm and urgency for immediate results often lead to precipitate action. In getting on safe ground in these great industrial, trade and transportation questions mistakes will be made. In all we do to reach the true relation between the State and its quasi-public serving corporations we must keep steadily in mind the fact that those who have embarked their capital in the great public serving enterprise have done much to create the growth, strength and prosperity of the republic, but they must be brought to realize to the full that just and reasonable service is due the people whose State governments have given them the franchises which have made possible their great intra and interstate supremacy. There must be mutual inclination to be just. The State must make it clear that it has the power to regulate but has no desire to hamper, confiscate or destroy. And the corporation must be brought to realize that it is the agency of the State, clothed with its authority to prosecute its business within the right conferred by its charter, but that while this is true its officials are citizens of the State and Republic interested in government and primarially obligated to promote the welfare and material interests of the people whom they serve.

If the whole subject be approached in this spirit, the great

question of the relation of the State to the utilities companies and of the corporations to the State will be worked out in a way that will result to the mutual advantage of all; thus assuring the continued prosperity of these great public enterprises, and at the same time guaranteeing just and reasonable service to the people and the business interests of the Republic.

The Chairman.—Gentlemen, is there any further dicussion on the subjects presented this morning?

Governor Weeks.—Before the adjournment, will the name of the presiding officer for this afternoon be given?

Governor Fort.—The Committee recommends that Governor Kitchin be the presiding officer for this afternoon.

(Thereupon, at 1 o'clock p. m., an adjournment was taken until 2:30 o'clock p. m.)

AFTERNOON SESSION.

January 19, 1909.

Met, pursuant to the taking of recess, at 2:30 o'clock, p. m.

Governor Sloan.—In the absence of Governor Kitchen, who was designated to preside this afternoon, the Secretary will call the meeting to order and recognize any gentleman who desires to speak.

Governor Willson.—I wish to say, that the Louisville Commercial Club extends the Conference of Governors a cordial invitation to hold its next meeting in Louisville, Kentucky. They say, "We can trust you to tell them about your neighbors and friends."

I wish to say about that invitation that I have always thought that more Governors would come to Washington than to any other place, and when we begin to go to other cities, we shall be invited and urged to come to such and such place, perhaps, for the purpose of booming certain towns; but at the same time, if the conference considers meeting at any other city than Washington, I wish to extend a cordial invita-

tion to meet in the State of Kentucky, and my friends and neighbors—they joke me about that, because I always refer to "my friends and neighbors" when I make a speech—will, I am sure, do all they can to show you a good time. Our people do take great interest in the people of the country who have a say in the world, so to speak, and who are interesting, and they would endeavor to make your visit to Kentucky a pleasant one. So, if you decide to go to any other place than Washington, I hope you will not go to any state but Kentucky. There really isn't any place just exactly like Kentucky.

Governor Sloan.—Is it your pleasure to proceed with the regular program, or await the arrival of the chairman for the afternoon?

On motion of Governor Draper, it was resolved that the meeting should proceed with the regular program.

Governor Sloan.—The next thing on the program is the address by Governor Brooks of Wyoming, on the subject of "Water Powers."

WATER POWERS

Governor Bryant B. Brooks of Wyoming

Mr. Chairman and brother Governors, I am very grateful to Judge Sloan for changing the program slightly and saying that this was to be an address, instead of a paper, because I have felt considerable embarrassment. However, from years of experience, I know that most of the Governors present have frequently found themselves in the same predicament as I am this afternoon. I was requested some time ago to prepare a paper on "Water Powers", but at that time I did not expect to have the pleasure of being present at this gathering, consequently I am here, minus my paper.

On the program, you will notice that Governor Shafroth, from my sister State of Colorado, is also down for a talk on this subject. I will say a few words in regard to the matter and then leave it for Governor Shafroth and others to elaborate.

The question was up this forenoon, and I confess frankly that to me it was worth the entire two-thousand mile trip to Washington to receive the encouragment which I did in listening to the remarks made by some of the Eastern Governors on this subject.

I had rather absorbed the idea that the West was looking at the question of water power in a different light from other sections of the country; but when Governor Hughes, this morning, stated as the key-note of his address that the control of the natural forces of industrial energy should rest largely in the hands of the States, he voiced the exact sentiment, the exact hope, of the people of all the western country; and I only wish that in some manner I could allay the suspicion which seems to prevail in some sections that our western country is trying to unduly, I might almost say unlawfully, acquire rights which in a measure, at least, the people of the East and South feel belong to them. We are not trying to do anything of that kind.

Since our meeting in this city two years ago, when the great question of the proper conservation of our natural resources was so emphatically thrust upon the public, innumerable addresses, lectures, and so forth, have been delivered relative to different phases of this great question. Countless thousands of newspaper and magazine articles, and even books, have been prepared. Conventions have met and passed resolutions; appeals have been made to State legislatures, and Congress. Naturally the West is aroused and vitally interested in conservation; but the problem varies in different sections and localities of this great nation of ours. The Governors from the South have local problems confronting them that we know nothing of. We want the people of the South to solve them. The Governors of the Eastern States, with their older civilization, have great industrial problems confronting them, which are the outgrowth of that civilization, and the wealth accumlated. We want the Eastern people to solve those problems. The Governors of the Central States have their great problems of navigation, drainage, forest preservation and supervision of other natural resources that in a measure perhaps have disappeared, and yet not wasted, for out of the use of those natural resources which were there when they first founded

their States have grown great and powerful commonwealths.

We of the West are the newer country. We have gone out there in the mountainous region, most of which is semi-arid in its character, and there amid the sage brush, in the land of the prairie dog and coyote we are trying to build up great and prosperous commonwealths in which you will all take just pride, and all we ask is that we of the West be given the same opportunities, the same rights, which you of the older States have always enjoyed.

Now, permit me to refer briefly to my own State of Wyoming. We have noted in the papers a great deal about power trusts, formed or in process of formation, and I say to you, brother Governors, that a power trust in Wyoming is an absolute impossibility. I listened this morning to the discussion of riparian rights. I say to you Governors that the English law of riparian rights does not apply and cannot apply in Wyoming. The same is true of many of the other western States.

At the very beginning, we realized that water, under our arid conditions, was the most important of all our natural resources, and the wise framers of our constitution embodied as part of the fundamental law of the commonwealth the wise provision that the water of all natural streams, lakes, rivers or collections of water in any shape or form, should belong to the State. And, another provision that water being essential to industrial prosperity, of limited amount and easy of diversion from its natura channels, its control must always rest in the State.

There you have the two fundamental principles necessary to control forever the sources of industrial activity.

Following those wise provisions of our constitution, our legislature from time to time has enacted laws granting to irrigators a certain amount of water to be used on certain specific tracts of land, granting to power companies the right to use water for power purposes; to municipalit es the right to use water for the cities; but the actual ownership of that water cannot be parted with by the State.

If a power company wishes to start a work in Wyoming, before it can build its dam, before it can take any steps in the actual construction of its plant, it must go to the State

Engineer and be given and granted a permit for that construction, and its specifications and plans must be submitted and approved by our State Engineer. Then the Manager is given a certain length of time, in which to go to work, in which to build his intake, and he is given the use of a certain amount of water subject to any future legislation which the Legislature of the State of Wyoming may see fit to impose, subject to any license that the State of Wyoming may wish to charge, now or at any future time. He is not given any right, nor can any power company in Wyoming, or in most of the Western States, acquire any right that cannot be extinguished except by condemnation. We believe that water power is one of the great natural resources belonging to the people, and that it should be exploited for the benefit of all our people. There is no way on earth to build up a power monopoly in Wyoming, and this is also true in most of the other Western States.

As I said, we are starting a new State, and I appeal to you and ask you to whom should the revenue go that may be derived from the future use of the waters belonging to that State, waters given to the state forever in our State Constitution and so ratified by the Congress of the United States?

For instance, the State of Washington has water power sites which, in the aggregate, would produce 5,000,000 horse power to be sold at 25 cents per horse power, amounting to a million and a quarter dollars annually, to go into the Federal Treasury. Is that right to the State of Washington? That proposition has been outlined and submitted.

The Governor from Kentucky said that he hoped that some day they could run all the government of the great and noble State of Kentucky from the revenue derived from their water power. Why, we too have visions! Give us the revenue derived from our mountain water power and other natural resources, and we will build a great, prosperous, populous, proud commonwealth, in which the word Equality is a living truth. Surely the revenue should go to the state wherein the power opportunities are located.

The western people have no desire to steal anything; they have no desire to take any right belonging to any person of the United States; but we have our own commonwealths and we think we should have the opportunity to secure all the

advantages, and to secure those advantages under restrictions that will prevent monopoly of every sort and kind. If you wish to take advantage of them, come out and live with us. Unfortunately, as I was about to say, there seems to be a sentiment created, attempted to be created at least, throughout this country to accomplish all reforms through Federal agencies. I believe that it is better for the American Nation, better for every commonwealth in it, that these questions of irrigation, of drainage, of power development, these local, domestic questions, should be controlled and managed by the patriotism and honesty of the people within the state. That is what we must appeal to, it seems to me. We appreciate the fact that the Federal Government can benefit us in many ways. We have that sincere affection for the Federal Government that we have for our own mothers. But we have the affection for the States that we have for our wives.

The heads of some of the federal bureaus, in their zeal to strengthen their departments, to make them powerful and influential, seem to think that all reforms should be accomplished through Federal agencies, and sometimes their meddlesome activity interferes with legitimate and profitable and justifiable development of our Western country. I was delighted to hear the Governor of the great Empire State of New York speak as he did relative to forest reserves. I believe he said that they had some three nillion acres of forests in his State that they wanted to protect and make useful and make profitable. I believe he stated that those forests were much like a field of wheat, needing intelligent supervision and protection, but that legitimate profit could be derived from them that would go to the State of New York if they were properly taken care of. We believe just that thing. We feel that every forest reserve in the west should belong to the Western States, under whatever restrictions and limitations the Federal Government may see fit to impose, and we know that we could and would protect every forest reserve out there in a superior manner: better in fact than it can possibly be protected under federal control. (Applause.)

Any revenue derived from those forest reserves should go to the state in which the forest reserve in located. We have never tried to impose upon the good people along the

Delaware River any tax upon their shipping for what money the Federal Government has expended in improving their rivers and harbors.

Now, what is the proposition to-day? The Federal Government has no interest whatever in the waters of Wyoming: but is holding some government land as a sort of trustee for all the people.

In this matter of power control, the suggestion is made that by charging for a transmission line across government land and by charging for land that might be used in making the abuttments to a dam, say 25 cents per horse power or more, several million dollars revenue could be derived from the Western States. One of the Governors has referred to our billion-dollar Congress, and in this connection I want to say that while a hundred thousand dollars, or even a million dollars, does not amount to much to the Federal Government, that it means life or death to the Western States in their future development.

The State of Wyoming leases its own coal lands. The revenue we receive goes to the State for the benefit of our schools, and mining is conducted under proper supervision, but when the government charges ten cents a ton for all the coal mined from Government land, it goes into the Federal treasury, and simply adds to the cost of every consumer in the Nation. Now, the forest reserves in Wyoming, in round numbers produced $160,000 last year, in grazing fees, and royalties paid for timber, by our citizens. We got 25 per cent of it back. It cost $60,000, including the expense of the service in Washington for administration, and left a net $60,000 that the people of Wyoming paid for forest administration in the great States like Pennsylvania and New York, where the benefits of the forestry service cost nothing.

We object to being bled for the Federal Government. We believe it would be just as injurious to the people of Wyoming and other Western States for the Federal Government to monopolize all these things as it would to have any other monopoly come in and take control. We realize fully the enormous value of our water power. We realize that if a monopoly could be created to control that energy it would be more burdensome upon the people of the West than even the

Standard Oil ever dared to be. But a monopoly is impossible under our present laws.

In the East, some monopolies have grown up under Federal laws, and I hope you will be able to find some means of controlling them or eliminating their unfortunate features. We of the West have no monopolies that are strangling us, and we do not intend to have any. We simply ask that the intelligence, the patriotism and loyalty of the western people, be given an opportunity to solve their own local questions, and therein rests the security and perpetuity of our great, free, grand American Nation. (Applause.)

Governor Norris.—You state that you were leasing your coal lands?

Governor Brooks.—Yes.

Governor Norris.—For mining purposes?

Governor Brooks.—Yes, we lease them for mining purposes on a royalty of 5 to 8 cents a ton.

Governor Sloan.—(Acting Chairman). The next matter on the program is remarks on the same subject just discussed, by Governor Shafroth of Colorado.

WATER POWERS

Governor John F. Shafroth of Colorado

Mr. Chairman and Governors of the States of the Union, ladies and gentlemen; I find that I am on the program to discuss the subject of Water Powers. I found on coming in this morning that the subject was being discussed out of its order, and several Governors expressed their views on the question at that time. Consequently you can see that it has not left very much for me to say. They have spoken first.

My predicament reminds me very much of a story of a man who sent his servant out to the barn to administer some medicine in the form of a powder through a tube, to a sick horse. Receiving his instructions, the servant went out to administer the powder. Pretty soon he came back. The master asked

him "Have you administered the medicine?" The servant replied, "You see it was just this way. I put the powder in the tube as you told me and put one end of the tube in the horse's mouth, and then put the other end in my own mouth, and was just ready to blow when the horse blew first." (Laughter.)

I feel the same way, being asked to talk on the question of Water Powers, after the elaborate discussion which has been made by the Governors of the various States this morning and Governor Brooks in his able address this afternoon.

I do want to say some things, however, if I can avoid repetition; and one of the things I want to say is in relation to the importance of the subject; The Governors seem to have a very large idea of the immensity of the water power in this country, but no figures are given. It is estimated to be more than 33,000,000 horse power. I have noted that an engineer has calculated what this water power is worth in dollars and cents. He has estimated that from the horse powers that are now generated in the United States, there are produced in manufactured articles for each horse power each year $1,152 worth of products. He has estimated that the amount of labor expended each year for the manufacture of those articles for each horse power generated by steam, amounts to $248 that this same estimate of the result of horse power as generated by locomotives on railroads, is $555 per horse power per annum, and that the annual wage which is paid in producing that result for each horse power per annum is $224.

A number of the States in this Union have a good many hundreds of thousands of horse powers that can be produced by water, and when we multiply those figures with the horse powers in the various States, we find that the amount which will result in the way of manufactured products and wages paid each year, will be perfectly enormous.

For instance, in my own State of Colorado, we have there the water to produce, it is estimated, from one to two millions of horsepower. We have not the large streams that you have in other portions of the United States, but we do have that which is far greater than that which you have in most of your States. We have a fall in the water, of from 2,000 to 5,000 feet, and you can readily see that with smaller streams we

can generate fully as much power, as you with a fall of only a few hundred feet. Besides we have some streams that are quite large, and on account of the rapidity of the descent, it is possible to generate electricity by water power in a distance of every four or five miles on our mountain streams.

The power plant at Shoshone in our State, near Glenwood Springs, in one that generates 20,000 horsepower. I noticed it in passing the other day. It lies along the Grand River, and the train runs on the opposite side of the river from this power plant. Some people have an idea that it is necessary to have great dams in order to have water power. That is not the case. A very small dam, not more than ten or fifteen feet high, raises the water so as to give it a head, and it is turned into pipes or tunnels—in this instance tunnels—and carried along the mountain side. The stream having a greater descent than the pipe line or tunnel, we get in a distance of four or five miles a fall of two or three hundred feet, and there the water comes down with immense force, turns turbine wheels and the power is generated. The distance from the intake to the power house is about five miles. I didn't see any reason why a power plant should be at that particular place more than at other places along the river. The grade did not seem to be any heavier. Hence, it naturally produced the conclusion that while there is one power plant there, that five miles above there could be another plant just as good, and a similar one every five miles of the stream; or that the water could be taken out where it empties into the stream at the Shoshone plant, and conducted down in another tunnel or pipe line, and every five miles below there could be another power plant of equal capacity.

This simply shows the enormous amount of power that can be generated by the waters of the mountain streams. We have already constructed in our State six or seven such plants which have a total capacity of 50,000 horsepower.

Of course, it is getting to be somewhat of a serious question in our State, because we have withdrawals of power sites upon the public domain by the National government. But say the power plants in Colorado amount to only one million horsepower, you can multiply that by the total product which experts have said is produced in manufactured goods, by each

horsepower, namely, $1,152, and what does it make? It makes by reason of the use of that power a possibility in manufactured products in Colorado of the sum of $1,152,000,000 each year.

In the same way if you multiply this 1,000,000 of horsepower by the amount that is paid for wages in the manufacture of the products that are produced by each horsepower, namely, $248, and you can readily see that it makes $248,000,000 as the ultimate amount of the wages to be paid each year, when this power is fully utilized.

Therefore, the benefit of this water power, when harnessed, generated into electricity and conveyed to the various portions of the State, is bound to be enormous.

In 1870 the division between power generated by water, and power generated by steam was practically equal in the United States, 48.2 per cent being by water and 52.8 per cent being by steam. Since 1870, there has been a great change in favor of steam power. Steam power in the last census attained 78.2 per cent, and the balance was divided between water power, oil, gas and some other motive powers.

Now there is a trend back to the use of water power, because of the ability to transform that power into electricity, to carry it for miles and apply it at centers of population where the power is needed. For instance, this power in the western portion of the State of Colorado is conveyed over the mountains of the eastern slope into the City of Denver; it lights the City of Denver at the present time, and a contract has been made by that company with the street car company of the City of Denver, to have that power run the street cars of that city.

Steam power is a very expensive power; not more than four or five per cent of the heat energy can be utilized or at least nor more than that per cent of the direct result of it can be obtained; whereas in the case of water power, by the generation of electricity more than twelve per cent is obtained. Consequently, water power is a very desirable power to be used in manufactures and in the running of trains, and in many other ways.

These conditions give us an idea of the magnitude of the great question that is before the American people with respect to water power and who shall control it.

There are two classes that are affected by this question—people who have power plants upon navigable streams and people who have power plants upon non-navigable streams. Of course the states in which power plants can be erected are deeply interested. You know that the later day improvement of navigable streams, consists very largely in the building of dams at points some distance apart. The locks which are necessitated and required, produce the fall of water in such immense volume at each of these dams, as to create a large quantity of power. The people of the Eastern States are identically in the same position as the people of the Western States with relation to this power, and with relation to the question of who should control it.

The general impression has existed for many years, that because the Congress of the United States passes an act permitting the erection of a bridge across a navigable stream, before the person who desires to construct that bridge can proceed, the United States Government possesses the power to control the waters of that stream. Now, that is not true. It does not possess the ownership of the water. It does not possess the ownership of the land upon either side. It does not own the land underneath the water. That is true also as to arms of the sea. Those questions have been considered and determined by the Supreme Court of the United States time and again, and those rights have been determined to be the property of the people of the States; consequently the assumption which has been made, that there is a vast distinction between navigable and non-navigable streams, as to the powers of the Government with relation to their water, is a mistake. The only power which the Government possesses over navigable streams is a right to see that commerce shall be permitted to use that stream. It is a negative power, a right to prevent obstruction to navigation. That, and that alone, is the jurisdiction which the United States Government possesses over navigable streams. And therefore, if it builds dams and thereby improves rivers, it has no right or title to the water that creates power at those dams.

Upon the non-navigable streams there has never been any contention but that the States, or the people of the States, within which the waters flow, are the owners of such waters.

That has been decided so often and so many times, that it seems to me it ought not to be questioned at all.

A distinction is attempted to be made in the Western States; States where the Government has considerable public lands. It is upon the theory of the ownership of that public land by the Government that there is based the claim of the right to interfere and to assert that the Government can control those waters. It is not a direct assertion or claim that it owns the waters. That is relinquished. It has been decided, by numerous decisions of the Supreme Court of the United States, and of the States, that the Government has no right whatever to control any waters of a non-navigable stream. But it is contended by some that inasmuch as it owns the public lands, and inasmuch as these lands lie along the streams which are non-navigable, that they are in position to dictate the terms upon which water power can be developed along such streams. We say that it has not been given that power. We maintain that the right of the United States Government in any land that it may own within the borders of a State, is not that of a sovereign, it is that of a proprietor, and that the United States Government stands exactly in the same position with respect to land which it owns in a State as does a private citizen. Consequently, Congress cannot lawfully assert, that by reason of the ownership of that land, it will control the streams within a State, or will charge prices either for the site, in the way of royalty, or for the use of the waters. We contend that the Government stands in the same position as an individual, and you can readily see that that is the logical position.

You have never seen a United States post office erected in any State or Town in the United States, but that before it was constructed, the State Legislature passed an act authorizing the erection of the building and ceding jurisdiction over the site to the United States Government. The Government never erects buildings under any other conditions. And the very fact that it requires that to be done, is illustrative of the fact that the United States Government has no political jurisdiction whatever over this territory, but that those matters belong to and of right are the property of the States.

There are illustrations in which the courts have held— for instance, that as to a United States fort, which existed in a State where there was no cession on the part of the state government of jurisdiction, that the right of eminent domain, which is an integral part of sovereignty, existed as to that land, although it belonged to the Government and although the Government was using it for a specific purpose.

Also that assessments by state authority are valid upon Government land, where the United States by some mistake had failed to get jurisdiction ceded to it by the state government.

These are the conditions under which all lands within the boundaries of a state are held. They are held by the Government exactly in the same way that they are held by individuals, simply with the right of proprietorship without the right of government over those lands.

All of the states since the adoption of the Constitution have been admitted under a peculiar phraseology. You can turn to the enabling act or resolution, which authorizes each Territory to be incorporated into a State, and you will find that the language which is used in every instance is of that character, which makes it plain that the right created is identically the right of each of the original states. This language is to be found in every resolution admitting a State into the Union; "On equal footing with the original states in all respects whatsoever".

There can be no mistaking that language. It has been clinched by the words, "all respects" and "whatsoever". That makes it clear and conclusive that whatever rights existed in the original states, exist in each of the states admitted into the Union since that time.

In the Supreme Court, in the Alabama case, in which the question across as to whether the State of Alabama or the United States Government, had certain jurisdiction, as to land, it was held that the right of the Federal Government was not a political right, not a right in which it could exercise governmental right and that the jurisdiction of administering the laws existed in the State of Alabama.

I must say that while the danger of Federal control of waters appears a little more eminent to the States of the West, than to the States of the East, the only way in which the law, as

decided, could be set aside or evaded would be by claiming by indirection what could not be done by direction; that the question might under certain conditions be taken up and considered, as President Taft said at the opening of the Civic Federation, by an appeal to the general welfare clause. Old General Welfare; it has served a good many purposes. I am a believer in strong government by the Nation as to those things which belong to National affairs. It may be that under pressure, under strain, under determined effort, this power might be wrongfully transferred from the states to the general government. I want to say to the gentlemen who represent the original States, States which have not any lands belonging to the National Government within their borders, that they are subject in the same way to the danger of the stretching of that general welfare clause, so as to make it apply to water powers within their States. It is not a long stretch, when the Government improves a navigable river, to claim upon the part of the National Government that having manufactured this power, they have a right to dispose of it; and under that general welfare clause of the Constitution, it is not at all certain, but that the trend may be against you gentlemen of the East, more than it will be against us. But I maintain that this, being a local affair, the administration being by officers in the States, there could be no fair construction that could vest in the United States Government the right either to charge for or control the water power generated in the States.

As Governor Brooks has told you, we are not in exactly the same position as you of the East, because you have the old law of riparian rights. If you own a farm in the East through which water runs, you cannot diminish the water so as to impair the flow thereof through the lands below. But a different rule prevails in the arid section. With us, by reason of the necessity of the situation the water is subject to appropriation, and whoever first appropriates it is entitled to its use, and any person can lead the water out of the bed of the stream, until that stream becomes absolutely dry, provided he appropriates the same for beneficial uses. That is done in our State all the time, and if it were not done, we would not have the fertile valleys, and irrigation systems, by which

we are enabled to produce the enormous crops of agriculture and fruit, which are the wonder of the world.

The different rule which applies with us is something that has caused the administration of the division of water in our States. For instance, we have what are termed water commissioners. We have in our State eighty-five of them. Each of them has a district. That district takes in a main water course for a certain distance with its tributaries. The Commissioner for a district divides the waters among the irrigators, giving to them water measured in cubic feet per second according to a decree obtained in a court of record. The decree specifies that the ditch which first appropriated the water shall be number one, and shall be entitled to the first right to take from the stream water to the extent of that appropriation. The decree then specifies that the ditch which next appropriated the water shall be ditch number two, and shall be entitled after ditch number one has diverted its water, to the remaining water to the extent of its appropriation, measured in cubic feet per second. The decree continues to number all the ditches in the district in accordance with the priority of their respective appropriations.

It is immaterial where along the stream the head-gate of the ditch having priority No. 1 is located. If it is situated far down the stream, sufficient water to satisfy priority No. 1 must be permitted to flow to its head-gate, no matter how many head-gates of later ditches it passes. In other words if there is a shortage of water, it must be distributed only to ditches having the early appropriations, and the gates of all other ditches must be shut down and locked.

This has given an administration and division of waters by our State for irrigation purposes, and those same laws apply as to the division of water for power purposes. The administration and division of waters has always been done by state officers, and has always been considered the exercise of state governmental functions. No federal officer has ever attempted to exercise such powers.

The Reclamation bill, before it was passed, created considerable discussion as to whether or not there should be any authority vested in the United States to supervise the dis-

tribution of waters diverted or stored, by reason of the irrigation works that might be constructed under the national irrigation act. I happened to be on the committee that framed that bill, and we had numerous discussions as to just how far there should be any recognition of such duties in the National Government. The conclusion which was reached and the clause which was placed in the act itself, provided that nothing in that act should be construed, so as to interfere in any manner, with the distribution of water under supervision of the States.

It seems to us in the West, that when it is claimed that water, which is appropriated by individuals and corporations, can be charged for perpetually by the National Government, that such action is not only inconsistent with the decisions that have been rendered, but inconsistent with the very acts of Congress relating to the jurisdiction of the States as to the use of the waters that flow therein.

This, of course, leads us to one conclusion, and that is that we are a National Government in national affairs, and are sovereign States as to those affairs which belong to the States.

There however is a question, that even if this general welfare clause could be construed some way or other contrary to the decisions that exist up to the present time, whether it would be expedient for the Government to possess those rights upon navigable streams in any State or upon those streams where the Government owns some land contiguous to the streams, which are non-navigable. Would it be expedient for the National Government to assume that jurisdiction. As I have said, we have state control of these waters and a machinery that is perhaps as perfect, if not more perfect, than in any one line of administration we possess under State government. Would it not provoke a conflict, if federal authorities were to attempt to exercise the power of determining when water should be turned out, or when water should be turned in to a certain tunnel or pipe line for the purpose of generating power?

If the National Government did exercise that power, there would unquestionably arise serious conflicts between federal and state authorities.

We have great conflicts between the irrigators themselves, although they are not permitted to touch water boxes through

which water is taken into their ditches. Any attempt to interfere with a water box, when once placed by the water commissioner, is punishable by fine and imprisonment, and the law in this respect is rigidly enforced. The consequence is, we never have much of a disturbance as to the distribution of water by the water commissioner. But under divided control there would be a direct conflict between the National and State authorities, because you know these waters are extremely valuable, not only for power purposes, but also for irrigation purposes.

Besides what is the use of the people through the National Government paying for a corps of officers to distribute waters, when the States already have officers well equipped for that purpose? For the National Government to make a charge upon the citizens of the United States, for the running of water through their own plants, is to exact charges of the West which it has never done as to the Eastern or Middle States, and therefore would compel the West to pay an undue proportion of the burdens of the National Government. It seems to me that under those conditions, the United States Government would not deem it wise, (even if it possessed the power), to attempt to control the waters of any of the States, either upon navigable streams or upon non-navigable streams.

But the contention is made that there will be a great monopoly out there. You cannot have a monopoly in this, any more than you can have a monopoly of all the dry goods stores in the United States. The number of power sites is innumerable. Every five miles along the Grand or the Gunnison or the Arkansas or the Platte rivers, in my State and along hundreds of rivers and streams in the West, water power can be generated, and that being the case, the immensity of the amount of power is prohibitive of the creation of a monopoly.

Do the officials down in Washington imagine that they are the only people who do not desire that a monopoly should exist? I have been in the National Legislature here, and I did not see that there was any more sacred regard for the suppression of a monopoly here, than there was in our own States. In fact, I think there is a little more care exercised by State Legislatures against monopoly, than in the legislation which is enacted on the hill in Washington.

We have laws that exist in the States which are exercised to prevent a monopoly. Every one of these power enterprises is nothing but a common carrier. The ditches that conduct water for irrigation have been declared, in case they carry it for any other purpose than their own land, to be nothing but common carriers. They have no right to demand any more than a reasonable charge for the water, and if they do demand more, a customer has a right to appeal to the county commissioners of the county, and claim that a ditch is charging too much for water, and demand that a reasonable rate be fixed. Then upon hearing, under sworn testimony, the commissioners fix the rate for water which is a fair compensation upon the investment made.

That law has been on the statute books of my State for years, and it has determined the price that should be charged for water time and time again. The statutes have never been contested on the theory that the State did not possess that power. The States have within their authority the laws and the machinery to suppress monopoly. The United States Government would have a good deal more difficulty in suppressing such monopoly if it could be formed.

So, it seems to me that from the standpoint of expediency, the United States Government should not undertake to control, regulate or charge for these waters.

As to the raising of revenues on the part of the National Government and on the part of the States, the National Government has by far the advantage. The manner in which it raises revenue, the indirect way in which it can is done, the large number of sources from which it can derive revenue, gives to the National Government an easy mode of obtaining plenty of money with which to run its various departments. It ought not to consider for a moment the taking of any revenue from the States. The power plants should be required to pay to the States for the waters they use, reasonable amounts to maintain the necessary force to control the distribution of the waters, and to support State Government.

We have in our system of jurisdiction a dual government; we have the state government and we have the national government. I want to call attention to a remark made by one of the greatest Justices of the United States Supreme Court.

He came from your State of Kentucky, Governor Willson. I refer to Justice Harlan. In a speech delivered a few days ago, he made this statement:

"What, let me ask, are some of the grounds upon which the pessimist of these days bases his fears for the safety of our institutions? He persuades himself to believe that the trend of public affairs is towards centralization of all government power in the Nation and the destruction of the rights of the States. If this was really the case, the duty of every American should be to resist such tendency by every means in his power. A national government for national affairs and state government for state affairs is the foundation rock upon which our constitution rests. Any serious departure from that principle would bring disaster upon the American system of free government."

Let us follow this advice and assert strongly the rights of our States to the control of our water powers. I thank you for your attention. (Applause.)

Governor Sloan.—(Acting Chairman). It does not seem probable that the Governor chosen to preside at this session will be here this afternoon. Is it your pleasure to select another Governor to preside at the remainder of the session?

Governor Fort.—I suggest Governor Carroll.

Governor Shallenberger.—I second the motion that Governor Carroll be selected.

The question was taken and Governor Carroll was unanimously agreed to as the chairman for the remainder of the session.

Governor Carroll.—I thank you for the honor.

Governor Hughes.—I understand that Ambassador Bryce is present, and I suggest that he be invited to the platform.

The Chairman.—Will Mr. Bryce come to the platform? I take pleasure in introducing to you Ambassador Bryce.

REMARKS OF AMBASSADOR BRYCE OF ENGLAND.

Mr. Chairman and gentlemen. Nothing in my life has surprised me more than to be drawn from my obscure position in the back of the room and be asked to address this assembly—and to address an assembly so august as the one composed of the Governors of your States.

I only venture to say, in the natural embarrassment and diffidence that I feel in being suddenly offered so great an honor, that it is to me, and, I am sure, to every one in every country who has followed the development of your Constitution and who is interested in its further growth, exceedingly interesting to see such a meeting as this, a meeting of the Governors of the forty-six great commonwealths that constitute your Union. It is a new thing and it is an interesting illustration of the old maxim that those things which time requires come to pass.

You have felt for some time past the necessity of endeavoring to have, if possible, more uniformity in the legislation of your States than has existed. Some have thought that that uniformity ought to be sought by extending the sphere and range of the National Government so as to enable it to legislate upon matters which are not expressly confided to it by your Constitution. There is felt, on the other hand, to be great difficulty in disturbing those ancient and revered land marks which divide the sphere of the National Government from the sphere that belongs to the States; and therefore, if I understand it rightly, this meeting of Governors is intended to meet that difficulty by endeavoring to consider whether there are not ways by which that greater uniformity, which I understand is desired between the legislation of the different States, may be obtained without in any way altering the existing limits of power between the National Government and the States. How far that can be done, is a matter, of course, upon which I have no right to express an opinion; but to all students of your institutions, it is most interesting to perceive that such an effort as this is being made and that you have met to determine

whether or no there are matters in which further uniformity is needed, and how that can be obtained.

It strikes us students of your institutions as a further matter of interest that for this purpose recourse is being had to the ancient office of Governor of the State. It used to strike me, when I was trying to understand your history, that there had been a certain diminution at one time in the authority and power and influence of the State Governor, and that that great power and influence which unquestionably belonged to him in the first fifty years after the foundation of your government, had begun to some extent to decline; and I think it is no less interesting to observe that of late years the tendency seems to have been for the power and influence and authority of the State Governor to increase and to be revivified—not increased in the way of giving him any larger statutory powers in the States as against the legislatures than he formerly enjoyed, but increased in this sense; that your people seem to be looking more and more to your Governor as the representative of the consciousness and conscience of the people of the State; that the Governor is felt to be more and more the representative of the State just as truly as the members of the legislature, and that the people of the State look to the Governor as the man who is to continually watch and observe their sentiments and their opinions, and to endeavor to devise what is best for the State. Therefore, where a State Governor recognizes that responsibility now, and takes a part in advising his legislature and in voicing the sentiments of the people of the State, that Governor enjoys, and deserves to enjoy, a very great influence.

That seems to me a hopeful side, because it enhances the importance of the office of governor and it provides the means by which the general opinion of the State is able to act.

It is sometimes complained that legislatures are such large bodies that it is rather difficult for them to have that vigorous and united action which belongs to an individual. Nobody wants to give any power to an individual in this country of yours; you all want merely to be exponents of the sovereign will of the people; but there may be an advantage in having in the government the means of collecting and giving expressions to the views of the people in perhaps a more definite form than

it is easy to have them given by the legislature, and therefore I think the legislature itself will naturally welcome a fellow worker and helper in the Governor of the State.

We in England are not under that difficulty. With us, the legislature and the executive are in such close and constant touch, owing to the presence of our executive in Parliament, that there never can be any conflict between executive and legislature. If there is, the executive goes under and disappears. But with you, where the executive does not sit in the legislature, it is eminently desirable that there should be, nevertheless, a touch, a feeling of co-operation, a feeling of mutual understanding, between the legislature and the executive, and that the legislature should welcome in the executive a person who can help to express to them what he believes the general sentiment of the State to be.

I hope I have made clear what has occurred to me in watching the relations to one another of your executive and legislature.

It is also very interesting, I think, gentlemen, that when an attempt is made to see whether further co-operation between the States can be obtained it is through a meeting of the Governors that that is sought. You, in meeting here together, are able to learn one another's views, you are able, each, to ascertain from the other what is the opinion of the State, what are the particular needs and feelings of each State. You can carry that back to the other States. I venture to think, if I may say so with diffidence, that you will be all the fitter for the task of working along with your legislatures in the States, because you have learned to know by this intercourse and exchange of ideas what is the sentiment of each of the States and how far those sentiments differ and how far they agree.

You are all, every person from the highest to the lowest in this country, the servants of and desirous to be the exponents of public opinion; the more organs you can have for gathering and fixing public opinion, the better. No country has ever tried with such complete confidence in the people to leave the determination of affairs, the guidance of policies, to the public opinion of the nation. The difficulty about it is that public opinion is such a large and indeterminate thing! And the more organs you can contrive for

ascertaining public opinion, for bringing it together, and foreseeing that it is able to work upon definite problems in a definite way, so much the better for the principle of public sovereignty, of which you have been in the whole world the most complete and the most effective exponent. (Applause.)

Governor Weeks.—Before we proceed further, I move that a hearty vote of thanks be extended to the Honorable Ambassador for addressing us and in expressing his views at this time.

The motion was numerously seconded, and a vote being taken, the motion was unanimously agreed to.

Ambassador Bryce.—I thank you and can only assure you of the honor I feel in being invited to address you.

The Chairman.—The next on the program is a paper on Railroad Rate Regulation by Governor Hadley of Missouri.

RAILROAD RATE REGULATION

Governor Herbert S. Hadley of Missouri

Mr. Chairman, fellow Governors and ladies and gentlemen. I do not know whether Ambassador Bryce, in the study he has made of our history and our institutions, has run across the incidents of which I think I have somewhere read. A question arose in the early days of our country as to whether the President of the United States should first call upon the Governor of Massachusetts or whether the Governor of Massachusetts should first call upon the President of the United States. I think I can say to him as expressive of our idea of this situation, that while we have no intention of bringing again into existence this controversy, yet I think I can say that he properly interprets our presence here when he says he sees in the trend of our institutions a desire to emphasize the importance of the office of governor, so that no one can question but that all officials, except the President of the United States, should first call upon the Governor of the State.

When your Committee on Program first communicated with me upon the question of speaking on this occasion, I was asked to speak upon the subject of State Regulation of Public Service Corporations, from a western standpoint. I was also advised, that Governor Fort was to speak upon the question of regulation of public serving corporations from an eastern standpoint, and knowing that any subject that Governor Fort discussed from any standpoint would be well and completely discussed, I suggested to him that I might speak with more appropriateness on a special phase of the subject namely, railroad rate regulation. I made this suggestion for the further reason that during the four years I served as Attorney-General of the State of Missouri, I was in constant and vigorous controversy with the eighteen railroads in my State, over the subject of State regulation of freight and passenger rates. And I felt that what experience I had gained in representing my State in that controversy might be of some importance and value to the Governors of the other States.

In discussing the subject of railroad rate regulation, I will undertake to deal only with such phases of the question as are of practical importance in the efforts of the states to regulate the rates and the service of railroad companies.

The question in its broader significance is one both of legal and economic importance. The right of the state to regulate the charges and the service of public service corporations has been one of the most important questions with which the American people have had to deal. It has involved a controversy both as to law and as to policy. But that it is the right of the state to regulate the charges and the service of public service corporations, within constitutional limitations, has now practically ceased to be a question of controversy.

The question of advisability, however, is one upon which there still exists some difference of opinion. There are those who contend that while it is the right of the state and the national government to regulate the charges and the service of public service corporations, it is inadvisable, particularly in the case of railroads, for this power to be exercised at all; that the fixing of the rates of transportation, particularly in freight traffic, is a science with which a legislature or a

commission is poorly qualified to deal, and that the public can safely trust to the fairness of the men in charge of railroad properties and to the effects of competition to secure at all times, and under all circumstances, reasonable rates for the transportation of persons and of property. I think, however, it can be fairly stated that experience has shown that this power cannot safely be trusted to any man or set of men, free from the superior power of governmental control. And that those who oppose the exercise by the state and the national government of the right to regulate the charges and the service of railroad companies now constitute an inconsiderable minority is evidenced by the marked tendency in recent years, both upon the part of the states and of the national government, to exercise this right of regulation in a manner effective for the protection of the people's interests.

It is not, however, without historical interest and significance to note that the right of the states or of the national government to regulate railroad rates and service was, a few years ago, an active subject of legal controversy. For over forty years following the beginning of railroad construction in this country, the railroads were allowed to carry on their business practically free from any governmental regulation or control; and, in addition, those who constructed and operated such properties received from the public large gifts of land, of bonds and of money to aid in the construction of the roads, and the charters that the railroad companies received from the states were practically dictated by the railroad companies, free from any reservation or safe-guards for the protection of the public interests. But, finally, the excessive charges levied by the railroads for the transportation of persons and of property and the other abuses incident to railroad operation, created a public sentiment which found expression in the laws of the various states regulating freight and passenger rates, or creating administrative boards charged with the duty of fixing rates and regulating the service of the roads. These laws were not only bitterly contested in the courts as unconstitutional, but, in addition, the most doleful predictions of disaster were freely made if their constitutionality should be sustained by the courts. Such laws were, however, sustained by the courts and fortunately the predictions of disaster

were discredited by subsequent events. And, yet, the victory that was won by the people in securing decisions from the courts as to the right to regulate the charges and the service of railroad companies, was largely a strategic one, for the reason that laws that were passed in the enforcement of this right were habitually violated or disregarded. And for nearly a quarter of a century the right of the people to regulate the charges and the service of railroad companies has been exercised with unsatisfactory results.

It is only within recent years that the people have come to understand the true nature of the obligations which the law imposed upon the railroads upon the one hand and the rights that it conferred upon the public on the other. Under the principles of our common and the provisions of our statute law, a railroad is both a common carrier and a public highway. A railroad corporation is created by the state and given certain unusual powers and privileges in order that it may render to the public a service common to all alike and on fair and equal terms. It exercises some of the powers of sovereignty and as a consequence it owes to the public an impartial and fair discharge of all the powers conferred upon it. Men who associate themselves together in the form of a partnership or a corporation for the purpose of engaging in any ordinary business enterprise have a legal and a moral right to make as much out of their business as they can make by conducting it along legal and honorable lines. But men who associate themselves together in the form of a corporation for the purpose of operating a railroad, or any other business impressed with a public use, have neither legal nor a moral right to receive more than a reasonable return upon the value of their investment. In so much as they receive more, in so much do they take from the public that which they have no right to receive; and every person who pays to a public service corporation an amount in excess of a reasonable charge for the service rendered, can recover such excess in an action at law in case he can prove his facts.

These principles are so elementary and so fundamental that one ought almost to apologize for taking your time to state them. But when we realize the extent to which these principles have been violated by the public service corpora-

tions of this country, and their violation accepted with entire complacency by the people who were wronged, we find much therein to justify the statement that the American people in the intensity of their money-making and money-getting life have lost their capacity for moral indignation. And while this condition may not have justified the oft repeated charge that the history of railroad organization and control in this country has been a history of crime, it does strongly tend to show that the obligations which the law imposed upon those in charge of such properties have been persistently disregarded.

The same lack of successful results has attended the efforts of the national government in the regulation of the rates and the service of railroad companies in inter-state traffic as has obtained in the case of the states. In 1886, the Inter-State Commerce Commission law was passed to meet the urgent demand upon the part of the people for some legislation in correction of the evils and abuses that existed in the railroad business of this country. This legislation followed an exhaustive investigation conducted by a Congressional Commission whose reports disclosed the existence of many evils and abuses.

While I cannot within the scope of this discussion deal with all of the causes of the ineffectiveness of these efforts of the state and national governments for the regulation and control of railroads, it must be apparent at once that the lack of continuity of effort on the part of the public in these contests is a fundamental weakness which is largely responsible for the unsatisfactory results obtained. And, further, there has been a lack of scientific investigation and information with reference to the facts upon which the reasonableness or the unreasonableness of a freight or passenger rate must depend. All of the evidence bearing upon such issues has been in the possession of the railroad companies, and it is a charitable view to take of the situation to say that this evidence has been used by those in charge of railroad properties in such a way as to mislead, not only the public, but also themselves.

The last ten years have witnessed many satisfactory changes in the conditions incident to the efforts of the public to regulate the rates and service of railroads, and particularly of other public service corporations. The Hepburn Bill, passed

in 1907, was evidently intended to confer upon the Interstate Commerce Commission power to fix rates in inter-state traffic, a power which manifestly should have been conferred upon that Commission when it was created. While the recent decision of the United States Circuit Court of Appeals has manifestly restricted the powers of the Interstate Commerce Commission under the provisions of this act, I think there can be no question but that the right of this commission to establish a schedule of rates in inter-state traffic will eventually be granted and conceded. The creation by various states of appointive commissions composed of men of experience in dealing with such questions, has brought a marked improvement in those commonwealths in the relations between the railroads and the public. Scientific investigations have also been conducted by several states into the question of the reasonableness of freight and passenger rates and the value of railroad property, so that the contest is not the unequal one that it has been in the past, and the prospects of results fair to both the railroads and the people are more favorable to-day than at any other time before.

We can therefore, approach the consideration of this question of railroad rate regulation with the following propositions regarded as thoroughly established, not only by the decisions of the courts, but also as the result of experience:

1st. It is the right of the national government to regulate railroad rates in inter-state traffic.

2nd. It is the right of the State to regulate railroad rates in intra-state traffic, or in traffic wholly within the limits of the state.

3rd. This right of regulation may be delegated by the legislative bodies of the nation or the state to an administrative tribunal.

4th. The right of regulation must be so exercised as to give to the railroads a reasonable return upon a fair valuation of their investment.

The amount of such return is a question that has not been thoroughly settled by the decisions of the courts, although I think it can be fairly stated that a return of five or six per-cent would clearly be regarded as reasonable.

The necessary difficulties incident to the regulation by the states of the rates of the railroad companies engaged in intra-state and inter-state traffic do not obtain in the case of an ordinary public service corporation doing business entirely within the limits of one state. In the case of such corporations, the questions of law and of fact necessary to a determination of the question as to whether the right of regulation has been exercised within constitutional limitations, is comparatively neither a difficult not a complex one. It is only necessary to ascertain the revenue that would be derived, on the basis of past experience, under the schedule of rates fixed by the state; the reasonable expenses of conducting such business, upon the basis of past experience, and after a valuation of the property of the corporation has been made, then there remains the sole question as to whether the excess of earnings over expenses will bring a reasonable return upon the value of the property. Some difficulty will, of course, arise in the working out of each of these questions, and particularly in the valuation of the corporation. But under the rules laid down by the Supreme Courts of the various states and of the United States, the final determination of the reasonableness of the regulation of the rates of any public service corporation doing business wholly within the limits of a state is capable of reasonably satisfactory determination. An altogether different problem exists, however, in the regulation by the state of the rates of a railroad or other public service corporation which is engaged both in state and in inter-state traffic. In one of the pioneer cases, viz: Smyth vs. Ames, 169 U. S. 466, in which the question of the reasonableness of a law regulating railroad rates came before the court for determination, it was contended by the railroad companies that the earnings from inter-state traffic could not be considered in determining the reasonableness or unreasonableness of intra-state rates; and in determining the reasonableness of a schedule of freight rates, the earnings from passenger traffic could not be considered, and in determining the reasonableness of a passenger rate, the earnings from freight business could not be considered. This contention was made notwithstanding the fact that from the very beginning of railroad operation in this country inter-state rates have, to a large extent, been determined by intra-

state rates. The courts, however, in the case referred to sustained the contention of the railroad companies, holding that the reasonableness of a schedule of state freight rates must be determined by the return received from intra-state traffic, without reference to the earnings from inter-state traffic. And this rule has been followed in the trial and appellate courts in the decisions as to the constitutionality of the acts of the several states or the orders of administrative boards fixing schedules of freight or passenger rates in intra-state traffic.

The railroad companies are now, however, urging the novel contention that the regulation of intra-state rates by the state is in itself a regulation of inter-state rates and, therefore, is unconstitutional under the commerce clause of the National Constitution. The Supreme Court of the United States has, however, not found it necessary to pass upon this question, although in the case of Exparte Young, 209 U. S. 123, in which this contention was made, Mr. Justice Peckham said, in referring to it, that it was by no means a "frivolous contention." But assuming that the right of the State to regulate railroad rates in intra-state traffic is, and will continue to remain, unimpaired, it will not be without interest or profit to consider the question as to how the reasonableness of the rates that the state may prescribe is to be determined by the courts. In the first place, there is no difficulty as a matter of bookkeeping, in determining the earnings of the railroad companies on their passenger business, as distinguished from their freight business, or upon their inter-state business as distinguished from their intra-state business. A serious difficulty, however, arises in the apportionment of expenses. Assuming that the reasonableness of a schedule of intra-state freight rates is to be determined, how are the expenses of a railroad to be divided between passenger and freight traffic, and how are they to be divided between inter-state and intra-state traffic? How are the expenses incident to the maintenance of the road-bed and of the buildings along the right-of-way to be divided between freight and passenger business? How are they to be divided between inter-state and intra-state traffic? Who can say as to what portion of the expenses of the train dispatcher, of the section hands;

what part of the cost of the construction and maintenance of the bridges or depots is to be assigned to one or the other of these different classes of traffic? How are the general expenses of the road to be divided? These are questions upon which the railroads themselves are by no means agreed. And yet, it is at once apparent that it is impossible to determine the reasonableness of any schedule of rates until you determine the expenses that would be incurred in the production of earnings under such a schedule of rates. But, assuming for the purpose of argument and illustration that a division of expenses between the freight and passenger business has been made, how will the expenses incident to inter-state freight be divided from the expenses incident to the intra-state freight business? Even to one limitedly familiar with the methods of railroad operation, it must be at once apparent that no definite division of these expenses can be made. The same trains that carry inter-state freight carry intra-state freight. Except in isolated cases, the trains which carry one class of freight, also carry another. There is no distinction in the operation of railroad trains by reason of state lines, and the two classes of traffic are inseparably connected with each other.

Two methods for the division of these expenses have been suggested: one is known as the revenue theory, which is contended for by the railroad companies, and the other is the ton mile theory, which is contended for by the states. A concrete example will serve to make clear both the nature and the importance of this contention. In litigation in the United States Circuit Court in the State of Missouri to determine the reasonableness of a maximum freight rate law, the following facts were shown by the testimony: In the year 1904, the Burlington Railroad Company in the State of Missouri, earned $1,525,128.92 in its intra-state freight business, and $6,199,300.13 in its inter-state freight business. After dividing the expenses of the passenger and freight business, the expense of doing both the intra-state and the inter-state freight business for that year for the State of Missouri was given at the sum of $6,494,443.90. The railroad company contended that these expenses should be divided between the intra-state and the inter-state freight business in the proportion that

the earnings from the two classes of traffic bore to each other. But this was by no means all for which the roads contended. They contended that it cost from three to seven times as much to earn a dollar in the intra-state freight business as in the inter-state freight business, and consequently that the expenses of carrying on the two classes of traffic should be divided in proportion to the revenue derived from the two classes of traffic, with an added increase of cost for the intra-state traffic. And, thus, notwithstanding the fact that the Burlington Railroad in that year earned twice as much for each mile of road operated in the State of Missouri as it did on an average of its entire system; notwithstanding the fact that it showed a profit during that year in its freight business in Missouri of $1,229,015.15, it was contended that its intra-state freight business was conducted at a loss of $1,773,263.04, upon the theory that it cost three times as much, in proportion to revenue, to earn a dollar in the intra-state freight traffic, as it did to earn a dollar in the inter-state freight traffic, and that its loss was $3,993,000, upon the theory that it cost seven times as much, in proportion to revenue, to earn a dollar in the intra-state freight traffic as it did to earn a dollar in inter-state freight traffic.

Notwithstanding the manifest fallacy of this method of dividing the expenses, this theory has been accepted by the courts on account of the fact that it is supported by the preponderance of the testimony of railroad men. The result of their theory is that the higher the rates in the intra-state traffic the larger will be the earnings in that class of traffic; and the larger the earnings derived from that class of traffic, the larger will be the amount of expenses assigned thereto. It is difficult, therefore, to understand how, under this method of dividing expenses it would ever be possible for a state to establish a schedule of rates which would be found to be remunerative.

The method of dividing these expenses, as contended for by the state, was to determine the ton miles in the two classes of traffic and divide the expense in the proportion that the ton miles of intra-state freight bore to the ton miles of inter-state freight, with an added cost of not to exceed 50 per cent for the doing of intra-state freight business. Under such a

method of apportioning these expenses in the concrete case referred to, the profits of the railroad company on its intra-state freight business would have been $897,491 as against a loss of from $1,773,263 to $3,993,000, under the theory contended for by the railroads.

And, yet, this apparently contradictory theory was contended for by the railroads and accepted by the courts, notwithstanding the fact that the evidence also showed that the average earnings per ton mile by this road in its intra-state freight was 1.7 cents, while its average earnings per ton mile on inter-state freight was only .82 of a cent. And I think it is a safe proposition to assert that it will be found in any state that you gentlemen have the honor to represent that the railroads are charging the people for that business done wholly within the limits of your state twice as much per ton mile as they are charging for inter-state freight traffic.

I have given to you this concrete example to illustrate and emphasize the difficulties which have confronted, or will confront, every state in the Union if the reasonableness of its act in the regulation of freight rates is brought into question in the courts.

The same questions and the same difficulties arise in determining the reasonableness of an act of a state in fixing passenger rates. And the same disparity of rates has existed for years between the charges for the State passenger business and the inter-state passenger business. Inter-state passenger rates have been established so that when a business man in St. Louis found it necessary to go to New York or Washington, or a business man in New York found it necessary to go to Chicago, Omaha or Denver, he could make the trip in a car so equipped as to contribute to the safety and the convenience of travel. The train in which he rode traveled faster than any other; the cars were much heavier than the ordinary passenger coaches, and it was the exception for them to be occupied by as many as fifteen people; meals were served in an elegantly appointed dining car; the cost of the operation of the train, for the coal, water, trainmen and the wear and tear upon the tracks was heavier than for the ordinary passenger trains. And yet, the passengers in such trains have for years been carried at an average rate of not to exceed two cents a mile,

and frequently as low as a cent a mile. If the same man found it necessary to travel fifty or a hundred miles within his own state, he would doubtless find that the best accomodation that he could secure would be a day coach filled with some fifty or seventy-five passengers, with no conveniences except such as were absolutely necessary; in a car light in comparison with the cars of the through trains, filled with the dust, the dirt and the smoke of travel, operated more slowly than the through trains, and compelled to take a siding even for freights; and for such transportation he was charged three cents a mile.

It is contended by some that the two cent fares established by the legislatures of some fifteen or twenty states within the last few years have been fixed without intelligent preliminary investigation as to whether such rates would be compensatory. While that charge is unquestionably true, yet it is also true that in the contrast between the two classes of traffic to which I have referred and the charges made for travel thereon, the railroads themselves have furnished to the public a demonstration of the reasonableness of the two-cent fare.

In the litigation to determine the reasonableness of the two-cent passenger rate, the same theory has been advanced as in the litigation over the reasonableness of a schedule of freight rates, the railroads contending that it costs from 25 to 50 per cent more, in proportion to revenue, to produce a dollar in the intra-state passenger business than in the inter-state passenger business. The same arguments that make this revenue theory for the division of expenses fallacious in the freight traffic, also make it fallacious in the passenger traffic. If the amount of expenses to be assigned to the intra-state passenger traffic is to be determined by the relation between the earnings in the intra-state and the inter-state passenger business, then the higher the rates in the intra-state passenger traffic, the higher will be the portion of the expenses assignable to that traffic. And, yet, in view of the fact that the correctness of this theory has also been generally testified to by the railroad operators, it has been generally accepted by the courts as the proper method of determining the reasonableness of such an act of legislation.

From what I have said concerning the rates charged in

these different classes of traffic, it must have been at once apparent that no relation exists between the charges imposed by the railroad for the transportation of persons or property and the expense of doing the business. In other words, the theory upon which the railroad is operated is to fix the charges according to the value, and not upon the basis of the cost of the service. This proposition is expressed in railroad vernacular in the familiar expression that the charge is "made as high as the traffic will stand." And there has been a persistent, ably executed and largely successful effort upon the part of the railroads to be participants in the country's prosperity by charging each class of traffic such a rate as will give the largest possible return to the railroad company consistent with the continued operation of the business or industry.

I do not say that the system of apportioning charges according to the value, and without reference to the cost of the service, is entirely wrong. I am simply stating it as a fact in order to emphasize the lack of definite knowledge upon the part of those in charge of the railroads as to the expense of doing each particular class of the railroad business. And, yet, for years upon the testimony of interested parties, with such a manifest lack of relation between the earnings and the expenses of the different classes of railroad traffic, the courts have accepted these earnings as the measure of the expenses to be assigned to each class of traffic.

In what I have already said upon this question, I take it that it has also been apparent that the paramount issue in the controversy between the state and the railroad over the reasonableness of a schedule of freight and passenger rates, is not the value of the railroad property.

This question has been regarded as of marked importance by the public in these controversies, although, as a matter of actual practice, it is of minor importance and presents slight difficulties. In the controversy as to the reasonableness of the regulation of the charges of a public service corporation doing business wholly within the State, the question is, as I have stated, one of greater importance. But in determining the constitutionality of the act of a state in fixing freight or passenger rates, the principal question of importance is the method of apportioning the expenses common to

the freight and passenger, the inter-state and the intra-state traffic. If such expenses are to be divided on the basis of revenue, with an increased ratio of expenses, as contended for by the railroads, the question of valuation will never be of importance, for the good and sufficient reason that the returns from the state passenger or the state freight business will never be sufficient to show the return upon any valuation of the property that might be agreed upon. And, on the other hand, if the ton mile theory, or the passenger mile theory is to be adopted for determining the expenses between these different classes of business, then the question of valuation will seldom be an issue of importance, for the reason that the net earnings of each class of business will usually be found to be sufficiently large to give a reasonable return upon any valuation for which the railroads can reasonably contend. If, however, this question does become a question of controversy, it is evident that the methods followed for determining the value of property for the purposes of taxation cannot be adopted when the reasonableness of a rate regulation is at issue. The methods usually adopted for determining the value of the property of a public service corporation for the purpose of taxation are: first, the capitalization of net earnings; second, the market value of stocks and bonds; and, third, the cost of re-production. These methods have been approved by the Supreme Court of the United States where the question has been the correctness of the valuation of property for the purposes of taxation. When the question to be determined is the reasonableness of a rate regulation, I take it that the market value of the stocks and bonds would be an unfair basis of valuation, because the market value of the stocks and bonds is affected by the right of the public service corporation to charge high rates or low rates. The net earnings of the corporation are also unavailable as a basis of valuation, because by such a method of valuation, the more unreasonable the charges, the higher would be the valuation upon which the corporation would claim a return. Consequently, it seems to me manifestly apparent that the value upon which the corporation is to be permitted to have a reasonable return is what it would cost to re-produce the property in its present condition, with such added value for good-will, developed business and

established reputation that the corporation may enjoy. The value of the franchise should, in my opinion, not be considered, for this is something that the corporation receives from the people, and does not represent an investment by the owners either of money or of property. But this question is not to be compared in importance with the question as to the division of expenses between the different classes of traffic when the reasonableness of an act regulating railroad rates is involved.

If the thought has not already come to you, I trust that what I have already said has caused you to realize that the question of railroad rate regulation is a big question. I believe that all thinking men who have considered this problem realize that we have not as yet arrived at its final solution. Manifestly, railroad freight rates made by a state legislature in the hurry, excitement and inaccuracy attending the deliberations of such a body are inartificial, inelastic and oftentimes unfair both to the railroads and to the public. The efforts of legislators to successfully fix maximum freight rates in harmony with the present system of freight schedules, which has existed in this country since the beginning of railroad operation, will necessarily be a failure or successful only by accident. The regulation of such rates as, in fact, the regulation of the rates or the service of any public service corporation, can be much better accomplished by a non-partisan, non-elective, administrative board, the members of which have an expert knowledge of the questions with which they have to deal. Particularly is the importance of having such a commission to deal with the question of the regulation of railroad freight rates important. Railroad freight rates are fixed, as I have said, upon the value, and not upon the cost of, the service. The railroads have pursued the policy of arranging their traffic schedules so as to permit commercial centers to sell in or buy from distant territories which are not naturally tributary to them. Consequently, any interference with such schedules disarranges the entire commercial conditions of the section of the country to which they apply, and affects in a vital way the prosperity of cities, towns and industries.

In dealing with such questions, it is important that the representatives of the state, instead of working against the rail-

roads, or for the railroads, should work with the railroads to secure such reductions or changes in rates as will be fair to the public, which will not disturb established industries and which will give to the railroads a reasonable return upon the value of their investment.

The experience of a number of states which have undertaken the solution of this question in this way demonstrates that we are making progress. And that there has been a general improvement of conditions is true, if for no other reason, because we have come to a better understanding of many of the questions involved. It must be evident, however, that it will be necessary for us "to cut and try" a number of times before we have reached the final solution of the question of railroad rate regulation. Though it is claimed that the railroad rebate is now a matter of ancient history, there are other questions that remain to be met and solved. It is not sufficient that the same rate is charged to all similarly situated for the transportation of persons or of property. It is the unquestioned right of the people to demand that transportation rates should also be reasonable and fair. It is not enough that they should be equal; they must also be just.

This is the problem that we must solve and the work that we must accomplish. The charges that the railroads impose for the transportation of persons and of property cannot with safety and in justice to the people be left to those in charge of such properties, and the right of governmental regulation, supervision, and control must not only be fully recognized, but must also be fully exercised. It may be that it will take another decade to come to a correct and final solution of this problem. But whether it takes ten years or twenty years, the contest must go on. For the most important problem of commerce, and, in fact, of civilization itself, is the transportation of that which is produced by human labor from the place where it is of little or no value to a place where it is of a value sufficient to compensate for the cost of its production. There is nothing that we eat; there is nothing that we wear; there is no part of the house that shelters us from the summer's heat and the winter's cold, but that its cost is affected by the question of transportation. The question of trans-

portation determines the character of the poor man's breakfast and the rich man's home. One-third of the cost of everything we buy results from the expense of transportation, and thus the question of transportation enters, as a controlling influence, into the success or failure of every business enterprise, and into the success or failure of every single human life. Manifestly, it is through the railroads of the country that the life-blood of commerce flows. And those who have the power and by virtue of the power exercise the privilege of controlling and conducting the means of transportation, have the power and exercise the privilege of levying tribute upon the labor and the frugality of the people whom they serve. And experience has shown that it cannot safely be left to those who control the operation of these great enterprises to fix the rates at which shall be carried from the producer to the consumer that which constitutes the commerce of the Nation.

The difficulties incident to this question have caused some to contend that government ownership of railroads is the only satisfactory solution. I believe that the province of government should be not extended, except where it is certain and necessary to promote the public welfare, so as to include the ownership and operation of business enterprises. But as the only other alternative, we must administer the power of government so that the railroads of the country shall be open to all alike on fair, just and reasonable terms. And we must bring to an end the anomaly of the rich owners of poor corporations; of owners made rich by the exploiting of the people through the manipulation of railroad properties, and the railroad corporations made poor by the manner in which they are manipulated in the interest of those who control them. We must recognize the necessity of insisting upon the fundamental proposition that the right to engage in the operation of a public service corporation is a right to tax the industry and the frugality of the people, and that the people must adopt such methods of regulation and control as will result in this tax being equally and fairly imposed. In that optimistic sentiment which regards the American people as capable of solving any question with which they may be called upon to deal, I believe that the people can, through their administrative boards or commissions, regulate the charges and the operation of rail-

road companies without injustice to the railroads, and with fairness to the people. And if it can be our good fortune to help in the bringing about of this result, we can feel that we have deserved well of the States and also of the Republic.

Governor Eberhardt.—The National Association of Railroad and Warehouse Commissioners have held a meeting in which this matter has been discussed, and a resolution has been drawn by them and unanimously adopted which refers to the trial of causes in regard to railroad rate legislation. It is a very fair resolution. It is one, I think, which none of the Governors here will object to, and it was felt by the railroad and warehouse commissioners that if this body would go behind such a resolution and have it presented to Congress, it would mean a great deal. I will read it. It is very brief. After reading it I will move its adoption. I would suggest if resolutions are presented later, it can be incorporated among them, but it properly comes up at this time, since we have heard the very able paper delivered by the Governor of Missouri. I can say, in passing, that he has done a great deal in the interest of railroad legislation in the State of Minnesota. This is the wording of the resolution:

"Interference by the federal courts with the orders of state railroad commissions has been in the past a source of irritation; not so much because of any objection to the exercise of federal authority as by reason of the manner in which that authority has been exerted. In our opinion, the friction heretofore existing would largely be obviated if railroads and the holders of their securities were obliged to fully exhaust the remedies provided by the States before resorting to the federal courts, and such is the apparent intimation of the Supreme Court of the United States in the Virginia Corporation cases, Prentis et al. vs. Atlantic Coast Line Railroad Company, 211 U. S., 210.

"When the statutes of a State provide a method by which the orders of a state commission can be reviewed in the courts of the State, and when the State courts have authority to stay the operation of the order pending such proceedings in review, then in our opinion, the statutes of the United States should expressly provide that the federal courts shall exercise

no jurisdiction whatever until the final determination of the proceedings in review in the highest court of the State. If the state court has no authority to stay the operation of the order pending proceedings in review, then the federal court to that extent should exercise jurisdiction.

"After the conclusion of the proceedings in the state court the case should be transferred by writ of error or other proper process from the highest court of the State to the Supreme Court of the United States.

"If the statutes of a State provide no method by which such orders can be made the subject of legal review, the federal courts should exercise the jurisdiction which they now do, since some method ought to be and must be provided by which these public-service corporations can avail themselves of the protection afforded by the Constitution of the United States.

"Should a commerce court be established, as suggested by President Taft, for the purpose of reviewing the orders of the Interstate Commerce Commission, in our opinion the writ of error should lie to that court, and the injunctive process against the orders of state commissions should issue from that court.

"We do not deem it wise to attempt to approve the exact manner in which, or the language by which, this should be accomplished. We therefore recommend that Congress pass suitable laws to accomplish the suggestions of this conference and that the secretary forward a copy of this resolution to Congress and urge its consideration and enactment into law."

I think you will concede that it is a fair resolution, and if this body of governors will signify their willingness to go behind such a resolution, it will mean a great deal toward giving us legislation of that kind. I offer this and move its adoption.

Governor Shallenberger.—The State of Nebraska is vitally interested in this question, but I feel that a question as vital and going as deep as this does into matters essential to the state, ought to be debated and considered fully, and I do not know that we have a committee on resolutions. I would move, however, that this matter be laid upon the table until the further consideration of the convention, or referred to a committee on resolutions.

Governor Fort.—I entirely agree with that suggestion, and have in mind that this resolution should be referred to a committee to report upon it, to-morrow morning. I listened to it very carefully as it was read, and cannot say that I see anything objectionable in it; but I had this thought in mind as it was read; that it is probably difficult for Congress to pass a law with reference to the right of a man not to enter any court. It may be on reading it that that difficulty will be obviated, but I suggest that the Chair appoint a committee of five to whom the resolution be referred, to report to-morrow morning, whether action should be taken upon it, and if so what action,

Governor Eberhardt.—I withdraw my motion, and second the motion of the Governor of New Jersey.

Governor Hadley.—I wish to say in connection with the subject matter of this resolution, that three years ago, I think it was, the National Association of Attorney-Generals was meeting in the City of St. Louis and that association framed a resolution, requesting the National Congress to pass a law, defining more definitely the jurisdiction of the United States courts in controversies wherein the constitutionality of a state law was at issue. As the Eleventh Amendment to the Constitution provides that the jurisdiction of the United States courts shall extend to suits wherein a State is a party, considerable controversy has been had as to whether a suit wherein a state officer is enjoined from enforcing a law is a suit against a state or the state officer. The difficult problem is how a state can be sued without suing its officer; and yet in the case to which I have referred, the case of ex parte Young, Judge Harlan was the only dissenter upon the proposition that that was not a suit against the state but a suit against an individual exercising unlawfully the authority of a State. I say this question was passed upon there, and I think the Senator from Nebraska has framed and introduced a bill, now pending in the National Congress, defining more clearly that point. And the fact that that bill is pending might make it advisable for this meeting to consider the provisions of that bill, before taking any action on this resolution. It is a serious question with me, whether, with the pending legislation, we can recommend the passage of the law now pending or any law. My

purpose in speaking was to bring this matter to the attention of the committee and to the Governors, as it will probably be necessary for me to leave here to-night.

The Chairman.—If there is no further discussion, those in favor of the appointment of the committe in accordance with the motion of Governor Fort, will signify it in the usual way.

The question was taken and the motion was agreed to.

The Chairman.—I appoint Governors Fort, Harmon, Burke, Prouty and Ansel.

The next is the reception of the Committee from the Civic Federation.

Honorable Seth Low.—(of the Civic Federation): To-day I have with me a number of resolutions of a different character from those of yesterday. It is not necessary to read them all, but I should simply like to leave them with your secretary. They embrace the subjects, if you please, which in our conference it was thought desirable should be controlled by uniform legislation. None of them, perhaps, are ripe for action; but not for that reason is it less desirable that public thought should be called to these subjects.

There are five resolutions that relate to matters of a little different character. One is the resolution to which I adverted yesterday as likely to be passed, urging that when amendment is necessary to uniform bills that have been adopted, that amendments should be brought about, if possible, through the national conference of commissioners on uniform state laws, for it cannot be too earnestly called to the attention of every one concerned that the problem of uniformity involves two things; first, getting uniform laws, and next, keeping them. Unless the same machinery is used for amendment as for adoption, we are likely to lose almost without knowing it, the uniformity that may have been attained with great difficulty.

There is another resolution suggesting that where subjects not of a technically legal character are to be dealt with, the action used in the case of divorce is a most useful one—to constitute a national convention of persons, expert and interested in the treatment of the matter.

There is another resolution suggesting that in many cases affecting contiguous states, possibly uniformity could be advanced and preserved through agreements entered into between those states and confirmed by their legislatures.

There is another suggestion that the states which have not created bureaus for keeping track of the legislation of other states, either in their state library or in some special way, like the State of Wisconsin, would find it useful to do so.

There is another resolution which does not concern yourselves except by way of information, that we have authorized the appointment of a committee of fifteen to co-operate with the American Bar Association in trying to bring about improvement in procedure in legal matters. That is a question upon which the President of the United States has dwelt so often and so urgently.

I need only mention the different subjects contained in these resolutions. There is one favoring a uniform regulation as to water power, as to conservation of forests; as to a workman's compensation in case of injury; as to the protection of children employed in industries; as to the control of the sale of habit-forming drugs: as to the probate of wills and conveyance of real estate; as to a uniform insurance code.

I must say, Mr. Chairman that no subject has been brought to the attention of our conference when I have happened to be present which seems to call more earnestly for uniform action than the subject of a uniform insurance code in the different states. It was brought out that in the last nine years twelve hundred laws have been passed in the United States affecting insurance directly, to say nothing of laws affecting corporations in general and affecting taxation. It is not simply an academic advantage to have uniformity. I think anyone who reflects must realize that the expense in administration comes right back to the people. So there is an argument in the matter which ought to be pressed home. To the lay mind, I think it appeals very strongly that this whole matter of uniformity in law is a question of standardization, and we all know the immense advantages that come to us in standardization wherever that has been practiced in our affairs.

There is another resolution urging uniformity in vital statistics; another in the practice of medicine; another advocating classification of property for taxation; so as to avoid taxation by two states of the same property; another calling for uniformity in accounting by municipalities; another for uniform regulation of the new but important occupation of public accountancy.

The Governors are urged to co-operate with the Federal Government to procure information to guide measures of safety in mining.

Mr. Chairman, only one other resolution appears to which I need refer, and that is one by virture of which I am asked to convey to the members of this body, individually, the very hearty thanks of our conference for the appointment of delegates, which has been done by probably all of you, and also to convey to you as a conference, our thanks for the privilege which you have accorded to us in submitting to you in this formal way the action taken by our body.

On behalf of our conference, which has adjourned, Mr. Chairman, I express these thanks as warmly as I can, and I wish for your conference the greatest possible use and success. (Applause.)

Governor Fort.—The Committee on Organization reports that the chairman recommended to preside at to-morrow morning's session is Governor Spry of Utah.

Upon motion the report of the committee was adopted.

Governor Weeks.—Mr. Chairman, under the head of miscellaneous business, as a member of the Committee on Program, I wish to say that I have received a communication—and I think perhaps all the other Governors have received a similar one—from Mrs. Rice of New York, from the Society for the Suppression of Unnecessary Noise, and dealing more particularly with the suppression of unnecessary noise on the Fourth of July. I promised to bring it before the Governors, and I just want to say that the Committee on Program did not

have the matter before them, and if any Governor cares to bring the matter up, the Committee on Program, before we adjourn, would be glad to have you do so.

Thereupon, at 5:15 o'clock, p. m., on motion of Governor Willson, an adjournment was taken until to-morrow, Thursday, January 20, 1910, at 10:30 o'clock a. m.

THIRD DAY

New Willard Hotel, Washington, D. C.,

January 20, 1910.

The Conference met pursuant to adjournment, at 10:30 o'clock, a. m., Governor Spry of Utah in the Chair.

The Chairman.—Gentlemen, thanking you for the honor conferred upon me in making me your Chairman this morning, I would like to know your pleasure. Shall we listen to the report of the committee to whom the resolution offered by Governor Eberhardt was referred, or shall we proceed with the regular programme?

Governor Brady.—I would suggest that at this time we consider the resolution.

Governor Stubbs.—The Governor who offered that resolution is not present.

Governor Carroll.—Would it not be better to let it go over until this afternoon, as it may provoke discussion, and we have not any too much time for the papers that are on the programme for this morning's session.

Governor Prouty.—I move that the report be brought in and then perhaps laid on the table until this afternoon, so that they may have time to think it over.

Governor Brady.—I second that motion.

The Chairman.—Gentlemen, you have heard the motion, which has been seconded. Is there further discussion?

The question was taken and the motion was agreed to.

The Chairman.—We will now listen to the report of the committee.

Governor Fort, from the committee to which was referred the resolution offered by Governor Eberhardt on yesterday, made the following report:

"The Committee report that in their opinion the resolution offered by the Governor of Minnesota is not within the purpose and scope of this Conference, because it relates to action by Congress. The Committee believes the conference should not now consider other subjects than those which call for legislative and administrative action by the States, it being the province of the chief executives of the States to recommend measures to Congress."

On motion, the report was adopted.

Governor Hughes.—Mr. Chairman, I have received several requests from certain ladies who represent the Equal Franchise Society or some other society with like purpose, desiring to be heard for five minutes. I simply present the matter for the consideration of the conference, without reference to the merits of the subject, or without expressing any opinion on the desirability of such changes as are desired by these ladies; but I think it would be very fitting and courteous if the ladies had an opportunity to express their views, for, say, five minutes.

Governor Shafroth.—I second the motion that they be accorded five minutes.

Governor Quinby.—I also would like to second the motion.

Governor Shafroth.—It seems to me as these ladies are here, and their papers are not very long, it would be well to hear them.

Governor Quinby.—That is the proposition.

The question was taken and the motion was agreed to.

Mrs. Harriet Stanton Blatch.—To the Conference of Governors. As one of the objects of your conference is to establish in the separate States uniform legislation upon those questions which seem to demand a national policy, yet in regard to which federal action is impossible or inadvisable, we, a committee of women from the State of New York, feel that it will not be out of place to suggest that the political position of women in the several States is a question worthy of your most earnest consideration.

This question, like the others with which your conference will deal, is not likely to be settled nationally, but will,

in the future, as in the past, be entirely a matter of State action. It is also a question which, because of lack of uniformity in the electoral laws of the several States, causes discontent in a large body of our citizens. No other laws in the separate States stand in greater contrast than those dealing with the political rights of women. While in four States—Wyoming, Utah, Colorado and Idaho—women enjoy the exercise of the electoral rights which belong to citizens in a republic, in other States they have no part whatsoever in the political life of the community in which they live. Between these extremes our States illustrate every stage in political evolution from a complete sex aristocracy to a free, self-governing people. Between these extremes there are States in which women have the school vote, the tax vote, and, in Kansas, the municipal vote. This divergence causes constant unrest in our women.

It has been again and again demonstrated that human beings will not rest satisfied under disenfranchisement within a given boundary while their fellows outside that boundary enjoy political freedom. It causes, for instance, unrest for the women of New York to see with what little effect they work for protective legislation for women and with what ease similar laws are put on the statute books of Colorado.

We urge, then, upon this conference that the question of the political position of women in the separate States be made one of the topics upon which the most exhaustive information be gathered, to the end that woman's enfranchisement be made the basis of a full discussion at the next meeting of a Conference of Governors.

This is presented by Mrs. Maud Cabot, Chairman; Mrs. Entice Dana Brannan and myself.

Governor Carroll.—I wish to present an invitation which I have received, in telegraphic form, from the Secretary of the Commercial Club of Des Moines, inviting the Governors to hold their next meeting at Des Moines, Iowa.

I wish to most heartily join in this invitation. We are just one night's run from Kansas City, St. Louis, Chicago and Minneapolis; that is, you can get into a sleeper in the evening and wake up in the morning at Des Moines, coming from Kansas City, St. Louis, Chicago or Minneapolis. I do not

believe there is any capital city more centrally located than ours, and I can assure you we will take care of you properly if you will come out there. We would certainly be glad to have you come to Des Moines, say about next December.

Governor Ansel.—I move that the invitation from Iowa and also the invitation from Kentucky be given to the Secretary.

The question was taken and the motion was agreed to.

Governor Hughes.—In order that the important subject of arrangements for the next conference may have consideration before many of the members of the present conference leave, if agreeable to the Conference the Committee on Plan and Scope are prepared to make a report now.

The Chairman.—If there is no objection, we will listen to the report of the Committee on Scope and Plan for Future Conferences.

Governor Hughes.—On behalf of the Committee, I report as follows:

In amplification of the recommendations I may say a word or two, as they are severally presented.

The first recommendation is that the meetings of the Governors should be held some time between Thanksgiving and Christmas each year, and that such a meeting should be arranged for this year.

I may say, in regard to that, that in the opinion of the Committee, to have a meeting when many legislatures are in session, as would be the case after the first of January, would put many governors to unnecessary inconvenience. It might be convenient for some if the meeting were held in the spring but in some of the States that is the most laborious time of the year for the executive, and the weeks immediately preceding the adjournment of the legislature and the period thereafter, throughout which bills are considered and disposed are so crowded with work that it would be almost impossible for some executives to attend the conference during that time. When other times of the year are considered, perhaps there would be no time found so generally convenient as that following election and the Thanksgiving holidays, and before the Christmas season. It may be suggested that governors

would then, in many cases, be at work upon their messages, but if the conference were held early in December it would probably come before the most exacting labors in regard to the message, and it might indeed prove a considerable assistance, because matters which have been the subject of consideration at the conference would be fresh in the minds of the governors, and prompt action could be taken.

It is therefore the view of the Committee that provision should be made for the holding of a conference of governors this year sometime between Thanksgiving and Christmas, the precise day to be fixed by a Committee of Arrangements.

It is also the sense of the Committee that the next meeting should be held at one of the capitals of the States.

In regard to this, it may at first occur to members of the conference that we have been received with such courtesy at the two conferences held in Washington, and the pleasure of visiting the National Capital and the interesting associations here are such that it would be a marked disadvantage to meet anywhere else. A little reflection, however, will at once show that meeting here has its disadvantages as well as its advantages and that there would be conspicuous gain by meeting in the State Capitals. Our purpose is to deal with questions that concern the State, and our purpose is to deal with them in the most effective way for the purpose of developing the sentiment of the States and procuring an adequate support in public opinion. Now, if you will reflect upon what would occur if a meeting of this sort, bringing together thirty or more governors, were held in a State Capital, you can easily judge of the important consequences that would undoubtedly ensue. The presence of so many State executives at any particular State Capital, where the affairs of the State are of paramount consideration, would awaken the most lively interest, not only at the capital, but throughout the entire State. Every matter discussed, every proposal, every defect in state law, would be brought to the attention not only of the conference, but to the attention of the States that were contiguous and within the area of influence of which the meeting place might be regarded as the center. The State legislature, the administrative officers of government, all connected with the instrumentalities of the State, would be vitally interested in the proceedings

of the conference. The governor of the State in which the proceedings were held would naturally, to the best of his ability, play the part of host, and the social functions, if not on as large a scale as the functions in Washington, certainly would be of considerable importance and would not seriously suffer in comparison.

If our two conferences had been held in State capitals, we should already, in my judgment, have gained far more in the development of public sentiment toward necessary amendments in state laws than we have been able to gain here. Here our proceedings necessarily come into competition in the public estimate with matters of national concern, matters which will lose nothing at all by our absence, but which somewhat prejudice the attention that should be given to our state affairs. If for the next ten years we could have annual meetings in one capital after another, properly selected, it would be difficult to over estimate the sentiment that would be aroused and the interest that would be awakened in our meetings. Now the States know little of, and are affected but slightly by, our proceedings, and we must go back as governors and try to convey to our States and legislatures the importance of some of the matters that we have considered here, and the measure in which we succeed in doing so will depend upon our personal conductivity. I think anything that would aid us in communicating the influence, the power that is here developed, would be something that we ought to secure if possible.

The other matters referred to in the Committee's report are self-explanatory. The report is as follows:

"The Committee on Plan and Scope appointed by this Conference recommend to the Conference as follows:

1. That conferences of the Governors of the States be held annually.

2. That the next conference be held at a time to be fixed between Thanksgiving and Christmas in the year 1910.

3. That the next conference be held at a State capital.

4. That a Committee of Arrangements, three in number, be appointed to fix the specific date and place of the next conference, and to make necessary arrangements and to pro-

vide a programme therefor. That said Committee of Arrangements have power to appoint such sub-committees as may be deemed advisable in connection with said arrangements and said programme, and also for the purpose of collecting information and digesting the same, and making such recommendations for the consideration and action of the next conference as may be thought proper. That said Committee of Arrangements also have power to employ a secretary to aid said Committee of Arrangements and said sub-committees in their work.

5. That said Committee of Arrangements shall prepare a budget of the expenses of the next conference and of the preparation therefor, and shall apportion the total amount thereof among the States according to population, and communicate said budget and said apportionment to the Governors of the States, to the end that they may recommend to their respective Legislatures the making of such appropriations as may be required to pay such apportioned share.

6. That said Committee of Arrangements consist of Governor Willson of Kentucky, Governor Hadley of Missouri, and Governor Ansel of South Carolina.

7. That said Committee of Arrangements shall have power to fill vacancies in its own membership or in that of the sub-committees which it appoints."

The Chairman,—What shall we do with the report, gentlemen?

Governor Prouty.—I move it be accepted and adopted.

Governor Burke.—I second the motion.

Governor Willson.—Does that carry with it the location of the next conference?

Governor Prouty.—No, it does not, it is left to the committee.

Governor Willson.—Just one word before we adopt the report.

I have been very much in favor of sessions at Washington, but we have tried to consider others' wishes and I am always anxious to try everything that the others wish to try, and I wish to make one suggestion about state capitals. Our state capital is a place that I would be glad to have you go, but

it is a small town, a country town, and I don't know how it is with the rest of your capitals; but at Frankfort, while we have a good country hotel, of course it is nothing much more than a country hotel.

Governor Carroll.—If you will just yield on the proposition, Des Moines will furnish a hotel and a good one, and we have a good state capital.

Governor Willson.–I am sure you have. I suppose that will be a matter to take up later. I will be very glad to have the governors come to Kentucky, and as far as the place of meeting is concerned, our capital would be the nicest place in the State. But so far as hotel accomodations are concerned and so far as spreading the news through the newspapers and giving our meetings publicity is concerned, perhaps it would be better to go to a larger city, such as Louisville.

I do hope if this resolution is passed that you will come to Kentucky. The State is centrally located, as you know, and it will give you a home-like welcome. Then, you know, our invitation came to you first. I do not wish to oppose Governor Carroll, but I really hope, if we make a state movement, the first state to be selected will be Kentucky; that you will go to the South, so that all these governors of the North and Northwest will know just what sort of a State we have.

Governor Weeks.—Is not that referred to the committee of which the gentleman from Kentucky is chairman?

Governor Hughes.—The recommendation was simply that the meeting should be held at a state capital, and I hope the conference will not get the idea from the personnel of the committee that the intention is to meet at Frankfort or to dispense with first-class hotel accomodations. I think we can easily arrange to meet at a state capital where there are good hotel accommodations.

Governor Brady.—It is very essential that if we hold the meeting away from Washington that it should be held at some state capital, and I think the entire membership of this conference is perfectly willing to leave it to the good judgment of the committee that has been appointed, to decide upon which state capital it should be held at; but I am firmly of the opinion that we should confine it to a state capital.

Governor Carroll.—I have not the slightest objection to the committee except this. You have named as chairman of the committee the man who is asking for the meeting. Now, we are really in earnest in asking you to come to Des Moines. If you want to vote on this recommendation with the understanding that you go to Kentucky, I have no objection; but you are throwing this thing over into the hands of a competitor. It is rather a biased committee, I am afraid. I want to re-enforce what I have said to you. I think there is no place in the Union more centrally located and more accessible than our place, and our hotel accomodations are all right. I do not believe you will be disappointed in that respect. And we will furnish you a good meeting place. We will try to take care of you, and we would like for you to come to Des Moines. You ought not go to Kentucky when you have so much better opportunity to come to Des Moines.

Governor Burke.—Perhaps the committee which makes this report would not object to enlarging this committee on the selection of a site, so that other parts of the country may be represented.

The Chairman.—Do you desire to make a motion to that effect?

Governor Burke.—No, sir; it is simply a suggestion.

Governor Hughes.—The desire was to have a committee that would be familiar with the needs of this conference and not so large but that it could easily get together. I regret that Governor Willson has put in this Kentucky resolution, and I think when he comes to consider the members of the committee of whom he is only one, and not a majority, he will realize the important considerations which attach to the invitations from other States, and I hope personally that in connection with that he will consider not only Des Moines, but the historic associations connected with the capital of Illinois.

Governor Shafroth.—I do not know that it is within the scope of this report as to the subjects that are to be considered in the next meeting of the conference, but it seems to me that the one thing which we lack in this conference is concrete propositions, and I feel that this committee ought to have

the power either to frame themselves or to designate some committee that will frame laws and get them in such condition that we can consider the language of the law itself at the next conference. I recognize that we may be a unit upon general propositions, and yet every person who has had experience in legislative bodies knows that a great conflict arises on the very language of the bill that may be proposed. We are meeting before the sessions of our legislatures, and if we expect to have any influence on those legislatures, we ought to have a proposition in the shape of a bill, that we may say that it meets with the consensus of opinion that this law or that law should be enacted. So, if this report of the committee does not take in that, I want it to take in that, and I want this committee, to have the power to appoint sub-committees, say not to exceed three members each—because they won't do the work if they are larger than that—to frame the laws that are proposed, and present them here, the sub-committees to present them to the general committee, get a general discussion of them, and either turn them down or agree to support them in our states.

That is the only way, it seems to me, that we can make progress. We have had discussions here and have crystalized opinion on a few subjects, to a certain extent; but we have a total lack of what we are expected to go back and present to our general legislatures; and, that being the case, it seems to me this committee should have power to draft any bills they think should become laws throughout the States, and also to appoint such sub-committees as they deem are necessary. If that is not already within the scope of the report of the committee, I would to make that motion.

Governor Hughes.—It was the intention of the report, to show distinctly that that was embraced within its purview. In other words, one of the recommendations, is that this committee of arrangements shall have power to appoint such sub-committees as may be deemed desirable in connection with the programme which may be outlined, to collect information, to provide analyses, to make recommendations, and to do whatever may be done to facilitate the next meeting; and also to appoint a secretary to aid the committee and the sub-committees.

We do not feel it advisable to attempt, amid the activities and demands of this meeting, to frame an exact programme or to define what sub-committees should be appointed or precisely the limits of their work or how far they should go in a given direction. It seemed to us that, rather than attempt that under these conditions, it would be preferable to entrust a committee of governors with the arrangement of that detail. But it is our intention that the frame work should be provided, and personally I entirely endorse what Governor Shafroth has said, that it is desirable that these sub-committees should go as far as practicable. If they find a uniform law which has been drafted by these commissioners that is satisfactory, they may present that, with their reason to the general committee and thus to the conference. If they find that a uniform law can be drafted, they should do that. If they find it impracticable to get exact uniformity and they can present propositions which can be adopted and may serve as a common basis of legislation they may do that. But of course the first thing is the selection of the subject, and arrangements for securing data and so forth, so that this general committee will not merely present papers and arrange for discussion, as we have done at this conference, but so far as possible have specific recommendations to present to the next conference for debate.

Governor Willson.—One word in this connection. The governors will remember that when we were getting ready for this meeting I had very little authority about it. There was an authority given and I took it up because I felt it a duty. I did not want to assume anything, and I hope the governors will feel that it was simply because I was at the other meeting and was very much interested in the subject, and as everybody will remember the governors there were asked to suggest questions. As I had no authority to prepare a programme, I invited three of the governors to prepare one, and as we recognized we had no settled power, it was called a tentative programme. It has worked very well and pretty nearly as good as if it had been authoritative. But that was the condition.

Now, as to what we should do here. If this body voted unanimously for any proposition it would not have the slight-

est effect in an authoritative way, because we have no power. The only benefit here is what we learn. We cannot have a caucus. We can express views, and we can learn. In these two days I have learned a great deal, besides enjoying a great deal. I shall, of course, not object, because it is within the scope of the meeting to decide what to do, but it has been my impression, rather, that this organization was brought together for the purpose of making us acquainted with each other, for the purpose of hearing news, comparing experiences, and learning things.

I want to say one word about the place of meeting. I have felt really that it would not be becoming for me, having invited you here, to interfere about the place of meeting. I think the best way would be, perhaps, instead of arguing the different places, to just take a voluntary expression of each member as to where he would like to go; and that could be done in a note handed to the committee when the committee shall be selected.

Governor Brady.—I think that the explanations of Governor Hughes and Governor Willson are such that we all thoroughly understand them, and that the best thing to do is to adopt the report of the committee.

The question being taken, the report as submitted by Governor Hughes was unanimously adopted.

The Chairman.—What is your further pleasure, gentlemen? Shall we proceed with the programme?

Governor Weeks.—I move we proceed with the regular programme.

The question was taken and the motion was agreed to.

The Chairnam.—The next is a talk on irrigation by Governor Brady of Idaho. In introducing Governor Brady, I want to say that he is a gentleman who has done, perhaps, more than any other one individual in digging and building canals in the West. I take it he has a very interesting report to make to us.

IRRIGATION.

Governor James H. Brady of Idaho.

Mr. Chairman and gentlemen: I did not prepare my paper on the subject I am to discuss this morning for the reason that I cannot tell you in the short time I have at my disposal very many of the details of irrigation.

The subject of irrigation is one so broad and comprehensive that it is entirely impossible to discuss it intelligently at any great length at a meeting of this kind, and for that reason, I shall confine myself to some of the important features I think will interest Governors of the eastern states.

In commencing an address of this character—in commencing to discuss irrigation as a problem, it is usual for the speaker to begin with the early history of irrigation, back two thousand years ago, and tell about the wonders that have been accomplished in Egypt and the great dams and reservoirs that were built on the Nile, and then gradually lead up to what we are doing in modern times. Time, however, will not permit me to go into the question in any such comprehensive way, and I shall confine myself and my remarks this morning to irrigation in the west, and especially in my own state of Idaho. In describing irrigation in the state of Idaho, I will simply give you a picture of what is done in every western state, and for that reason, I shall discuss irrigation in my state and thus will give you a general idea of its application to all of our western states.

Idaho possesses an area of 54,000,000 acres of land. I mention this so you can understand the importance of irrigation in the valleys, not only of our State, but the entire arid west. Of these 54,000,000 acres of land, the National Government had set aside something over 20,000,000 acres, or over one-third of our entire area, as a Forest Reserve, and approximately 1,000,000 acres for Indian Reserves. In addition to these withdrawals, Idaho has approximately 17,000,000 acres of grazing lands and 5,000,000 acres of mineral lands, leaving about 11,000,000 acres of agricultural land.

In the northern part of our state, the climate is humid and irrigation is not required, except in a small area to insure against failure of crops. However, there is in the southern part of our state, about 10,000,000 acres of arid lands that can be reclaimed and made useful for agricultural purposes where water is available.

The conditions, I hope you will understand, are very different in the west from what they are in the east, as is discernible from the remarks of the Governors made at this meeting. Our friend Governor Fort yesterday referred to the fact that in early years large franchises had been granted to Alexander Hamilton and citizens of New Jersey, and that their descendents still hold those rights. The conditions existing in any state are really the cause of the laws that are enacted in those states. Conditions in the arid west were such that every one realized, when they went out there, that water was one of our greatest resources, and that without water the parched lands would ever be unproductive. It was necessary, then, that the people in order to protect themselves from a monopoly, or trust, or from any great body of men acting together and monopolizing that which was so essential to the life of every citizen, should create laws that would guard the people for all time against any monopoly of our water rights or resources of every character. The result is that in almost every constitution in the states of the arid west, there is a clause which provides that the waters of the streams of these states shall be used for beneficial purposes only. That is to say, that a man must use the water that he appropriates. There is no law we could pass, there is no body of men that could get together in the legislature and pass a law that would permit one drop of our water to be owned absolutely by any private individual or combination, except so far as beneficial use is made of it.

The difference between the east and west on this point is the fact that no water rights have been taken under the old principle of riparian water rights. Your water powers have been developed, your forests have been taken away and used—I will not say wasted, but they have been used—and you have built homes and factories in their place and converted the lands into farms.

The condition with us are such that development is still in the future; with us, we have a great area; with us we speak of things that will seem great to you people who have not thoroughly studied the resources of the west. Permit me to say at this moment that Idaho, the state I represent, produces today forty per cent of all the lead that is produced in the United States; that Idaho has more standing timber in its forests to-day than the great timber states of Michigan and Wisconsin combined. That will give you some idea of the natural resources of our states that we have to develop and must necessarily protect.

The remarks that have been made here by Governor Brooks and Governor Shafroth, are so entirely in line with my thought that it is going to make it unnecessary for me to dwell at any great length upon the particular rights of individuals under the laws of our different states; but I want to say this much and that is, we of the west—I believe that I have come the fartherest, farther than any other Governor here to attend the Conference—feel not only gratified, but proud of the privilege of being allowed to assemble here with you gentlemen of the east so we can look you in the eye and explain to you in a heart to heart talk, what our resources are, what our development is to be in the future, as we hope, and what our honest intentions are relative to those resources. We believe in the conservation of every resource. We believe that the resources such as arid lands, water powers, forests, coal lands and all other natural resources of that character, unqualifiedly should be for the benefit of the states in which those natural resources are located.

I am frank to say—and my friends from the west will tell you the same thing—that we expected to find here a disposition to criticise our attitude. We expected to find here a disposition to antagonize us in the plan of state development of our natural resources, but, much to our gratification, we shall go back and tell our people in the mountains and on the plains, that the Governors of the east believe we are right in the position we take, for you have stated your position before use candidly and frankly.

Again, we have in the west, some principles that must necessarily prevail in order to protect each and every citizen. Water

is worth just exactly what a man has to pay for it. As an illustration: I built a canal above this gentleman's state (referring to Governor Spry's state), in the valley called the Snake River valley. I had 40,000 inches of water in the canal. That 40,000 inches irrigated 40,000 acres of land and furnished the water to produce ample crops on 40,000 acres of land. I sold that 40,000 inches of water at a dollar an inch, or a total sum of $40,000 per annum, for the water for this 40,000 acres of land. Right down in Pocatello, there is a company that appropriated all the water there, which was 450 inches, and our people pay annually, or did pay annually to the Company, $25,000.00 a year for the use of that 450 inches of water. You will understand, then, water is worth just exactly what you must pay for it, for you must have it in order to exist. Such being the case, it is very essential that each and every individual be protected in his rights, and, in order to secure such protection, our laws are so enacted that each and every individual is protected. When a man wants to take water out of a stream he files an application with the State Engineer saying how many inches of water he wants to use. To illustrate to you who may not understand it fully, I will say, it requires from one-half to one inch of water to the acre to properly irrigate. The applicant files his application with the State Engineer; the State Engineer examines the records to see whether there is any filing in conflict, if not, the application is allowed, and if there is a man who has a filing in conflict he comes in and makes his proof and the Engineer decides which one has the prior right. After this is done the canal is built, and the water is taken down through the canal, and then through these different arms or arteries, which are built out over each and every farm, and on these farms is distributed this water to grow every crop that is grown in that country.

We have every advantage you have here, with the additional advantage that we do not have any failure of crops. It is practically impossible to have any failure of crops where you irrigate because you get your water when and how you want it. When you want water, the Commissioner comes and raises your gate, the water is turned into the lateral, and when you have enough, you notify the Commissioner and the

gate is shut down and the water goes down to the next farm. And so on all the way along the canal, until every farm in the valley is watered.

It makes, you might say, a community of interests. It makes everybody near neighbors. We enjoy a great many advantages in the west that you people of the east probably do not understand. Everybody in the arid west is everybody's friend, and it is necessary that it should be so, for we have only our land in the valleys to cultivate, and the great mountain ranges are used for stock grazing. So it is necessary that each man protect the others in order to build up his community.

We have our school houses on every hill and every dale; we have our churches scattered throughout the country, and we have our telephone connections, too. I can sit at my home at Pocatello and talk to Denver, to Cheyenne, to San Franciso, to Salt Lake City, to Portland, to Seattle and to Spokane, and I can talk to all my neighbors. And when I say my neighbors, I mean everybody living within a radius of about 200 miles, for everybody within 200 miles out there is considered a neighbor. Those are conveniences that you probably would not think we would enjoy.

Allow me to refer for just a moment to the question of water power. Water power and irrigation go hand in hand. We develop the water powers on the very same principle that we develop our irrigation. A party must have a permit, and when he accepts that permit, he accepts it at the time subject to the laws, rules and regulations of the state, and there is absolutely no possibility of a water power trust in Idaho, because the legislature can meet at any time and say what the company shall charge or what the user shall pay. This is a great advantage that the people of the east do not seem to understand that we enjoy. That is so for the reason that it is necessary at the time our laws were enacted to protect our people, and we did not wait until after our water powers were gone, or our irrigated lands taken up, but we enacted these laws at the beginning which are for the benefit of the masses and not for the benefit of the classes.

After all that is done, we take this water power and transmit it over electric wires for miles and miles, some of it as high as

250 miles, transmit it with only a twelve per cent loss. You can understand what that means. We can all have it to use. They have it on the farms where they cook and heat and light by electricity, because our water powers are so cheap that they can afford to do it. As an illustration: Take my home in Pocatello. I have not had a fire in my house to cook for seven years, nor a fire to heat the house either. We heat our house, we light our house, we heat our bath water and water for domestic use, and we do our cooking, make our ice cream and churn the butter, do the washing and the ironing, and the girls even wash the dishes by electricity. (Laughter and applause). I was going across the continent from Boise, our state Capital, to Chicago with a gentleman and we had to stop at my home in Pocatello, and I made this same statement that I have made to you to him, and he was a little skeptical, and the only way to convince him was to take him to my home and give him a meal prepared and cooked by electricity. And if any of you gentlemen will come to Idaho, I will be glad to demonstrate these things and let you have a meal cooked by electricity entirely.

The work of our development in the west in necessarily in its infancy. As I have said, we have in Idaho 54,000,000 acres of land, 20,000,000 acres in forest reserves. We have over 900,000 acres withdrawn for water power sites and things of that character; over 1,000,000 acres withdrawn for Indian Reservations, making over 21,900,000 acres taken away from us in which we have no control as a state. The great Snake River traverses our state from east to the west, and over half the length of our western border. This river is the seventh largest river in the world, and with its many large tributaries furnishes more water for irrigation purposes than any other river in Anerica. And if what you gentlemen say here is true, and we believe it is true, that the Government has no title to that water, they are simply retarding the development of our country, because a man must have a permit from the State Engineer before he can use that water, and we are not going to give a permit to any trust or monoply, whether it be a trust of financial men or a trust of the Government. That is the way we feel about it out there.

We have, in addition, great phosphate beds in Idaho. We

have developed there a whole mountain of phosphate. We have phosphate enough in the mountains of Idaho, around in Soda Springs and in that vicinity, to fertilize every acre of land west of the Rocky mountains. Our coal beds are yet practically undeveloped, but we have the same veins that Wyoming has; we have the same veins they have developed and from which they have furnished the coal for all our western country for years. And all those resources taken together tend to build up our great system of life under irrigation.

Now we are asked, first, to pay a royalty of twenty-five cents to one dollar a horse power per annum on our water powers. Last year our Forest Reserves earned from rentals of pasture and things of that character, approximately, $200,000.00. We gave to the United States Government $148,000.00 of that money, while we were spending our own money building trails through the Forest Reserves to protect ou· timber from fire and loss.

If we go on at the same rate with our phosphate beds and our coal beds, and our water powers, within ten years, at the present rate of development, we will be paying a tax to the National Government of over $1,000,000.00 a year. We do not ask that this money be given to us for indiscriminate use; we do not ask that this money be turned over to any man or set of men, but we do ask you gentlemen if it is not fair that it should be used for the erection of school houses, the education of our children and the building of roads through those 20,000,000 acres of lands, leading to the homes of men.

Not sixty days ago I rode in a pack train for three full days through timber in Idaho. To give you an idea of some of the timber that we have, I will state on that trip we came to a camping spot and I saw a beautiful tree, and I said to our timber estimator who was with us, "I wish you would estimate the amount of timber in that tree", which stood on state land, and after doing so he said, "There are 15,000 feet of good marketable white pine lumber in that tree." It was about seventeen feet around and ninety feet to a limb. That is the kind of timber we have. It means that we have timber enough to supply that western slope, with proper protection, for the next 500 years. And we intend to protect this timber. We intend to develop our country. We intend to conserve

our resources, and one of our greatest resources is our irrigated lands.

We commenced our work of irrigation some twenty years ago. I used to build canals, as Governor Spry who introduced me says, and I thought I was a pretty large canal owner. I would take a little stream down the valley, run it through a canal out over the land to be irrigated and probably irrigate thirty thousand acres of land from one canal, and I thought I had done wonders. But finally the Reclamation Service came along. Don't understand that I am speaking disparagingly of the Reclamation Service, for they have done a great work. They came to the west and commenced to investigate what could be done under irrigation by the Government. Previous to this in 1895 Senator Carey introduced a bill called the "Carey Act", permitting the United States to give to the state a certain amount of the public land, provided the state would reclaim and irrigate it. We availed ourselves of the benefits of that bill and the Government gave us 1,000,000 acres of land on condition that we would reclaim it and properly irrigate it, but for some years we were unable to do anything with it because we could not interest capital in irrigation. But Congress finally passed the Reclamation Act, and when it did so, it commenced to built two great enterprises in our state, one known as the Minidoka Project reclaiming 132,000 acres, and the other as the Boise-Payette, reclaiming about 300,000 acres of land.

The Government had not more than commenced on work of construction until the investor in the east began to sit up and take notice. Before the Government did this I used to come back east trying to raise money for irrigation projects. The men I talked to in the east would listen to what I had to say, and then talk about everything else in the world but irrigation. But when the Reclamation Service came in, they became interested and they came west and commenced to invest. And five years ago on the second of last July, we commenced our first irrigation project under the Carey Act. Since that time we have constructed, and are now constructing and have under construction, over $30,000,000 worth of canals, and we have constructed in those five years a canal that would carry a reasonable stream of water from New York to San

Francisco. We went back to Congress and asked for another 2,000,000 acres of land and Congress gave it to us. We have reclaimed 2,270,000 acres of the 3,000,000 acres, and we will reclaim the other million acres, which means an empire within itself.

In our state we have a population of less than 500,000 and if you will look up the statistics today you will find that Belgium, a kingdom that has less than 3,000,000 acres of agricultural land, supports a population of over 3,000,000 people. We mean to build homes on this land and there is no place that population can become more dense and, at the same time, more comfortable than on irrigated farms. That shows something of what can be done by irrigation. We are not going to stop. We are not going to look back. We believe that one of the greatest works of man is to make those wondrous valleys, where the Creator for some unknown reason hid his productiveness, bloom like the rose. That is what we pioneers have been doing for the last twenty years.

As I have already suggested, our people have felt that the eastern people were against them, that the eastern people believed and have had the idea, that we have been indulging in land frauds and have not been building homes. But I want to say now that I shall take the greatest pleasure in going back and telling my people that they have been mistaken; that the eastern people believe that we are honestly trying to build up homes and make irrigation in the west a success, and by making it a success, not only benefiting our state, but our sister states, such as Utah and California, and Washington and Montana, and that by benefiting those states the whole country will be benefitted. When irrigation is properly developed in the western states, we will be able to produce one-third of the products of this entire nation.

I want to say to you, my friends, that we are proud of our mountains and our valleys, our rivers and our plains, and all the wonders of our western lands, and we expect to go on and keep up the high standard of civilization we have set for ourselves so far. We may in the years past have groped, but we have always steered toward the light and always tried to lead to higher and better things, and I want to say to you in all earnestness, in conclusion, that it is what we are going to do

in the future. And if you will trust us, the people of the west will come back to you with an honest administration, with a good citizenship and with its resources conserved in a manner that will make every one of you proud of the irrigated west; proud of Idaho, the Gem of the Mountains. (Applause.)

The Chairman.—The next number on the programme this morning is a paper on extradition, by Governor Martin S. Ansel of South Carolina.

EXTRADITION.

Governor Martin S. Ansel of South Carolina

Gentlemen of the Conference.—It is with pleasure that I comply with the invitation of your committee, to read a paper at this conference on the subject of Extradition. I suppose that this subject has been a matter of interest and study to every Governor who sits under the sound of my voice, and who at times has been perplexed as to what his duty was in some given case.

It has appeared to me that the best way for me to treat this important subject, and the one from which we might all derive some benefit, would be to give a brief review of the law and decisions of our Courts upon the same.

It is, beyond all question, one that deals with the law, and upon which many decisions of the highest Courts have dealt.

It was a matter of so much importance that the framers of the Constitution of the United States thought it wise to put into our *magna charta*, a section which has been the law from that day to this.

The application of this section, and the Act of Congress, passed in accordance therewith, have been the source of much litigation before the Courts. There seems, however, to be but little difference of opinion as to what the rights and duties of the Executives of the States are, either in a case of requisition or extradition. As the decisions of the Courts

are of far more importance to you, than any opinion I might give, I will ask your indulgence while I refer you, briefly, to some of the cases on the subject.

Article 4, Section 2, of the Constitution of the United States, provides as follows:

> "A person charged in any State with treason, felony or other crime, who shall flee from justice, and be found in another State, shall, on demand of the Executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime."

The Revised Statutes of the United States, Section 5278, reads as follows:

> "Whenever the Executive authority of any State or Territory demands any person as a fugitive from justice, of the Executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found, or an affidavit made before a magistrate, of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the Governor or Chief Magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the Executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of his arrest to be given to the Executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the apprehending, securing, and transmitting such fugitive to the State or Territory making such demand, shall be paid by such State or Territory."

Many States have statutes upon the subject. It is, however, not necessary to refer to them here, as all State statutes must be governed by the provisions of the Constitution above cited.

In the celebrated case of *Ex Parte Swearingen*, 13 South Carolina Reports, 76, we find a very learned and satisfactory history of the law on the subject of Extradition, and the rulings of many of the courts upon the subject. I quote from that case:

> "The Constitution of the United States, Article 4, Section 2, provides that: "A person charged in any State with treason, felony or other crime, who shall flee from justice, and be found in another State, shall, on demand of the Executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime."

For several years after the adoption of the Constitution of the United States, there was no legislation providing the mode by which this clause of the Constitution should be carried into effect, and, as a natural consequence, controversies arose between the States in regard to this matter, one of which, between Pennsylvania and Virginia, doubtless gave rise to the passage of the Act of 1793 (Revised Statutes United States, Sec. 5278), prescribing the mode of carrying this clause of the Constitution into effect; when the Governor of Virginia declined to comply with the requisition from the Governor of Pennsylvania, the latter sent all the papers to President Washington, calling especial attention to the objections of the authorities of the State of Virginia, based on the necessity of future legislation on the subject, and suggesting that the matter be brought to the attention of Congress. The President referred the papers to his Attorney General, Mr. Randolph, who gave an elaborate opinion as to the proper construction of the clause of the Constitution in question, from which the necessity for further legislation was apparent. The President accordingly brought the attention of Congress to the matter by a message in November, 1792, and in the following February the Act of 1793, above cited, was passed. That act, so far as it is necessary for the purpose of this case to state, in substance provides, that whenever the Executive authority of a State shall demand any person as a fugitive from justice of the Executive authority of any State to which such person shall

have fled, and shall produce a copy of an indictment found, or affidavit made before a magistrate of any State, charging the person so demanded with having committed treason, felony, or other crime in the State from which the demand proceeds, certified as authentic by the Governor of the State from whence the person so charged has fled, it shall be the duty of the Governor of the State to which such person has fled to cause such person to be arrested and secured and delivered to the agent of the State from which such demand proceeds. It will be observed that three things are necessary to be done by the Governor of the State making the demand. 1st. He must demand the person as a fugitive from justice. 2nd. He must produce a copy of an indictment found, or an affidavit made before a magistrate of a State, showing that the person demanded is charged with having committed some crime in the State from which he has fled. 3rd. Such copy of the indictment, or affidavit, must be certified as authentic by the Governor of the State making the demand. The only inquiry, therefore, in this case, is, whether these requirements of the Act of Congress have been complied with; for, if so, the Governor of this State was not only authorized, but was required to issue his mandate requiring the arrest of the petitioner and his delivery to the agent of the State of Georgia.

As Taney, C. J., says in *Kentucky v. Dennison*, 24 How., 104:

> "It will be observed that the judicial acts which are necessary to authorize the demand are plainly specified in the Act of Congress, and the Certificate of the Executive authority is made conclusive as to their verity when presented to the Executive of the State where the fugitive is found. He has no right to look behind them, or to look into the character of the crime specified in this judicial proceeding."

The Court in this case goes on further to say:

> "It seems to us that the true rule is, that when a requisition comes to the Governor of this State for any person found in this State, which shows upon its face that all the requirements of the Act of Congress have been complied with, it is the duty of the proper author-

ities of this State to recognize the statements of facts made therein as true, and to surrender to the agent of the State making the demand, the person demanded, in the fullest confidence that he will receive ample justice at the hands of the authorities of such State. The very fact that there is no mode of enforcing the performance of the duty imposed upon the Governor of the State upon which the demand is made, by mandamus or otherwise (*Kentucky v. Dennison, supra*), makes it all the more obligatory that he should be scrupulously exact and prompt in the performance of such duty, and the courts should not lend their aid to defeat the provisions of the Constitution so essential to the preservation of that good will, which ought always to exist, between sister States, by demanding more than is required by the Act of Congress.

"The views hereinbefore presented are, we think, amply supported by the following cases:

"Kingsberry's Case, 106 Mass., 223; Clarke's Case, 9 Wend., 212; *In Re Voorhees*, 32 N. J., 141; *Johnston v. Riley*, 13 Ga., 133, as well as by an elaborate article upon the subject of Extradition between States. Am. L. Rev. (January, 1879), Vol. 13, p. 181."

The Act of Congress in regard to interstate extradition provides that when a proper demand is made upon the Executive authority of any State or Territory to which a fugitive from justice has fled, and upon the compliance with certain requirements therein specified, "it shall be the duty of the Executive authority to cause the fugitive to be arrested and secured and delivered to the agent of the demanding State." And it has been held that interstate extradition is not a matter of comity or discretion on the part of the State upon which the demand is made, but is an absolute duty imposed by the Constitution and laws of the United States, leaving to the Governor no right of discretion to refuse to issue his warrant when a proper requisition for the surrender of a fugitive is made upon him and the requisite evidence produced. 12 Amer. and Eng. E. L., 2d E., 605, citing:

Lascelles v. Georgia, 148 U. S., 537; *Lascelles v. State*, 90 Ga., 347; *State v. Toole*, 69 Minn., 104; *Work v. Carrington*, 34, Ohio St., 64.

> "The duty of the Governor of a State, upon proper demand, to cause the fugitive to be arrested and delivered to the demanding State, is not discretionary, but a mere ministerial duty."
>
> *Kentucky v. Dennison*, 24 How. (U. S.), 66; *Matter of Voorhees*, 32 N. J. L., 141.

"The Governor of a State, in issuing his warrant of Extradition of a fugitive from justice, acts in an executive and not in a judicial capacity. He is not permitted to try the question whether the accused is guilty or not guilty; he is not to regard a departure from the prescribed forms for making the application, or as to the manner of charging the crime in any matter not of the substance; and he is not to be controlled by the question whether the offence is or is not a crime in his own State, the enquiry being whether the act is punishable as a crime in the demanding State. Nor have the courts larger powers in any of these respects than the Governor."

Per Okey, Judge, in *Wilcox v. Noise*, 34 Ohio St. 520.

In passing upon the words, "it shall be the duty," the case of *Kentucky v. Dennison*, 24 How., 66, 170, holds as follows:

"These words, in ordinary legislation, imply the assertion of the power to command and coerce obedience. But they are not here used as mandatory or compulsory, but as declaratory of the moral duty created by this statute."

"The constitutional provision for the surrender by one State to another of persons charged with treason, felony or other crimes, embraces all crimes and offences of whatever grade made punishable by the laws of the State wherein the act was done, whether made so by common law or by statute. And when it appears that the fugitive is properly charged with a crime under the laws of the demanding State, is it immaterial to enquire whether or not the offence charged is a crime under the laws of the State upon which the demand is made." 12 Amer. and Eng. E. Law, 2d Ed., 601.

To sustain his text, the author cites the following cases:

Kentucky v. Dennison, 24 How. (U. S.), 66; *Taylor v. Taintor*, 16 Wall. (U. S.), 366.

The words "treason, felony, or other crimes" (in this section and in the United States Constitution, Sec. 2, Art. 4) embrace every act forbidden or made punishable by the laws of the demanding State, including misdemeanors.

Gould and Tucker's Notes on Rev. Stat., U. S., 988, citing: *Ex Parte Reggel*, 144 U. S., 642; *Kentucky v. Dennison*, 24 How., 66; *Morton vs. Skinner*, 48 Ind., 123; *Re Leary* 10 Ben., 197; *Brown's Case*, 112, Mass., 409; *State v. Stewart*, 60 Wis., 587; *People v. Brady*, 56 N. Y., 182; *People v. Donohue*, 84 N. Y., 438.

"*Must be a person charged with crime.* Under the constitutional provision for the delivery of 'a person charged in any State' with an offence, it is necessary that a person whose extradition is demanded should be charged in the State in which the offence is alleged to have been committed with the commission of such offence; this charge to be made by some court, magistrate, or officer, in the form of an indictment, information or other accusation known to the laws of that State." 12 Amer. and Eng. E. Law., page 601.

The author cites the following cases, to wit:

Ex Parte McKean, 3 Hughes (U. S.), 23; *State vs. Hufford*, 28, Iowa 391; *Smith v. State*, 21 Nebraska, 552; *Forbes v. Hix*, 27 Nebraska, 111; *Ex Parte Lorraine*, 16 Nevada, 63; *People v. Brady*, 56 N. Y., 182; *Ex Parte Reggell*, 114 U. S., 642; *Lascelles v. Georgia*, 148 U. S., 537; *Morton v. Skinner*, 48 Ind., 123, and many other cases.

> "The Governor, upon whom the demand is made, must determine for himself, at least in the first instance, whether the person charged is in fact a fugitive from justice, and he does not fail in duty if he makes it a condition precedent to the surrender of the accused that it be shown to him, by competent proof, that the accused is in fact a fugitive from the justice of the demanding State." 12 Amer. and Eng. E. L., p. 604.

Cases cited: *Ex Parte Reggell*, 114 U. S., 642; *Roberts v. Riley*, 116 U. S., 80; *Cook v. Hart*, 146 U. S., 183.

"Whether the person demanded is a fugitive from justice or not is a question of fact which the Governor upon whom demand is made must decide, upon such evidence as he may deem satisfactory. How far this decision may be reviewed judicially in proceedings in *habeas corpus* or whether it is not conclusive, are unsettled questions."

Roberts v. Riley, 116 U. S., 80.

"The Governor of a State or Territory is not required to surrender a person charged with crime unless it be made to appear in some proper way that he is a fugitive from justice. The accused is entitled to insist upon proof that he was within the demanding State at the time when he is alleged to have committed the crime charged, and subsequently fled from its jurisdiction so that he could not be reached by its criminal process."

12 Amer. and Eng. E. Law, p. 601, citing:

Ex Parte Reggel, 114 U. S. 642; *Roberts v. Riley*, 116 U. S. 80; *Ex Parte Smith*, 3 McLain (U. S.), 121; *In Re Jackson*, 2 Flipp (U. S.), 183; *Hartman v. Evaline*, 63 Ind., 344; *State v. Hall*, 115 N. C., 811; *Ex Parte Swearingen*, 13 S. C. 74.

> "The motives or purposes of the party in leaving the State where the crime was committed are entirely immaterial; all that is necessary to constitute him a fugitive from justice is that, being within a State he there committed a crime against the laws, and when required to answer its criminal process, he has left its jurisdiction and is found in the territory of another State."
>
> *State v. Richter*, 37 Minn., 436.

To be a fugitive from justice "it is not necessary that the party charged should have left the State in which the crime is alleged to have been committed, after an indictment found, or for the purpose of avoiding a prosecution anticipated or begun, but simply that having within a State committed that which by its laws constitutes a crime, when he is sought to be subjected to its criminal process to answer for his offence, he has left its jurisdiction, and is found within the territory of another."

Robert v. Riley, 116 U. S., 80; *Ex Parte Brown*, 28 F. R., 653

"A fugitive from justice is a person who commits a crime within a State and withdraws himself from its jurisdiction without waiting to abide the consequences of his act. To be a fugitive from justice in the sense of the Federal law on the subject, it is not necessary that the party charged should have left the State in which the crime is alleged to have been committed after an indictment has been found against him, or for the purpose of avoiding a prosecution anticipated or begun; but it is sufficient if he has, within a State, committed an act which by its laws constitutes a crime, and if when he is sought to be subjected to its criminal process to answer for his crime, he has left its jurisdiction, and is found within the territory of another State."

12 Amer. and Eng. E. L., 602. Cases cited:

In Re White, 55 Fed. Rep., 54; *Matter of Voorhees*, 32 N. J. L., 141; *State v. Hall*, 115 N. C., 811; *Hibler v. State*, 43 Tex., 197; *Roberts v. Reilly*, 116 U. S., 80.

"If the indictment against the fugitive is framed in substantial accord with the laws of the State which makes the demand for his return, the Executive upon whom demand is made cannot deny a requisition because it is not drawn according to the technical rules of criminal pleading."

Ex Parte Reggell, 114 U. S., 642.

"The sufficiency of the indictment is to be determined by the courts of the State which makes the demand, not by the Executive upon whom it is made."

Kentucky v. Dennison, 24 How., 66.

"If the indictment is certified by the demanding Governor to be authentic and to be duly authenticated, and charges a crime under and against the laws of the State from which the accused has fled, it is sufficient, although a certified copy of such laws was not furnished the Governor upon whom demand was made."

Roberts v. Reilly, 116 U. S., 80.

"The warrant of the demanding Governor is conclusive evidence in a *habeas corpus* proceeding that the party named in the warrant stands charged with crime in the State on whose behalf demand is made."

Re Leary, 10 Ben., 197.

From these decisions I conclude that there is but one question of fact that the Executive must pass upon, and that is, whether the person charged *is a fugitive from justice*. If that fact appears to his satisfaction, either from the papers or from proof *aliunde*, and the requisition papers show upon the face of them that the other requirements of the Constitution and Act of Congress have been complied with, then I maintain that he has no alternative but to honor the requisition made, and issue his extradition warrant, to the agent of the State making the demand.

Governor Hughes.—Mr. Chairman, I think we are all indebted to Governor Ansel for his very careful compendium of the law upon the subject of extradition.

There are three points which have been forced upon my attention in connection with this subject that I would like to bring to the attention of the conference. I am sure every governor desires, when he receives a requisition from another governor, to honor it and not to raise any question unless it is absolutely necessary in the interest of justice and in the proper execution of the law.

In the case of an indictment we have very little difficulty. The sufficiency of indictments is to be determined by the law of the demanding state. But in some jurisdictions the practice is to have the grand jury indict, laying the crime as of the date of the beginning of the session of the grand jury. That is to say, with the November grand jury meeting on the 5th of November, we may find for example, the crime is charged in the indictment as having been committed on the 5th of November. Then the person demanded presents his case to the Governor and shows that at the time of the alleged crime, on the 5th of November, he was not within the demanding State. On communication with the Governor of the demanding State, he will inform you that under the practice of that State it may be shown on the trial of that indictment that the crime was committed at any time within the statute of limitations and that the state is not confined to proving that it was committed on the exact date mentioned in the indictment. Of course if the executive honors the requisition which, he is disposed to do unless there is proof presented by the fugitive

which seems to show it should not be honored, he is practically putting the burden on the fugitive of showing that he was not in the demanding state at any time during the period of limitation. The actual date of the crime should be properly stated in the indictment.

I had one case where the facts were substantially as I have stated. The man had been in the state some months before; he was not in the state at the time mentioned in the indictment. It was then claimed that the crime had actually been committed earlier. It seems to me unreasonable that a man whom it is claimed is a fugitive should have to negative his presence in the demanding state for a period of years. It would seem to me proper that the state that demands him should state about the time when he committed the crime; so that whether or not he is a fugitive from justice and was within the State when the crime is claimed to have been committed can be properly considered.

Governor Fort.—Would you not think it possible to accompany such an indictment as that with affidavits?

Governor Hughes.—Yes, in such a way as to show the time when it is claimed the crime was committed. I am making this suggestion simply in the interest of convenience and disposition of business between governors.

Another thing. We have had an enlargement of our parole system, and some states adopt the practice of paroling prisoners on the condition that they shall go to other states. New York is a favorite resort, apparently, for those who have been disposed of in this way by the authorities of other states. And when there is some infraction of the condition of the parole, the man who has been paroled on condition that he shall go outside the state is charged with being a fugitive from justice. I have refused to honor such a requisition and have taken the position that if any state undertakes to dump its criminals in New York it will never get them back. (Laughter.)

Of course this parole system is a very important phase of our reformed methods in penalogy, and they are not used and should not be used for the purpose of getting rid of criminals and sending them into other states, but of having them within observation and of securing the performance of the

conditions of the parole. To provide as a part of the parole that the man should go to another state is inconsistent with the position that he is a fugitive from justice when it later appears that for some reason his return is desired.

A third suggestion is this. There is little difficulty in the case of indictment, apart from the point I have raised. Then the only question is whether a man is a fugitive from justice. But we do have, I am sure, a great deal of difficulty where there is no indictment, but where there is an affidavit. According to the weight of authority, as I understand it, it is not sufficient for an affidavit to be made by a person who disclosed no relation to the transaction, but simply upon information and belief charges the commission of crime. And yet I must say that I am receiving very frequently requisitions with a short affidavit on information and belief, charging that a person has committed an assault or burglary or something else, without anything to show the ground of the belief, the source of the information. And what is very close to that is a charge not in form made on information and belief, but made by a person who disclosed no relation to the transaction, and in formal language simply to the effect that John Doe, being duly sworn, says that Richard Roe has committed burglary in the State of X.

I think it proper that sufficient facts be stated to show a reasonable probability of knowledge on which to base a charge. There should not be simply an assertion, apparently irresponsible, but a charge upon a proper presentation of facts.

The Chairman.—Our next number is a paper by Governor Richard E. Sloan of Arizona, on mining.

Governor Sloan.—Before this programme is proceeded with, I understand that Governor Carroll is very anxious to get away.

Governor Carroll.—I simply have a matter that will compel my attendance at one o'clock, and I should not be able to deliver my paper this morning. Therefore I will ask that you permit my paper to go over until this afternoon.

THE ASSESSMENT AND TAXATION OF MINES

Governor Richard E. Sloan of Arizona

Mr. Chairman and Governors. After so many able and instructive papers and addresses upon subjects of general interest, I feel a hesitancy in presenting for the consideration of the conference a subject which, because of its somewhat local character, may seem to many of you to be of purely academic interest.

It is my purpose to present briefly some of the difficulties which have arisen in the assessment of what are usually termed metalliferous mines, and the mode which has been adopted by the legislatures of a number of our mining States to secure uniformity and equality in the valuation of such mines for purposes of taxation.

It may seem strange to those unfamiliar with this subject that there should have arisen difficulties or perplexities in the assessment and taxation of mines which are not presented in the assessment and taxation of other species of real property. That there is, however, in the very nature of this species of property, a difference, sufficiently important to call for its own method for the ascertainment of its value for purposes of taxation, not applicable to other species of real estate, will be admitted by most men familiar with the subject.

A mine as such has no value apart from its mineral contents, and the mineral contents of a mine cannot be determined or estimated with any certainty without exploration, more or less extensive, and the most careful and scientific examination and measurement of its ore bodies. The physical nature, therefore, of metalliferous mines makes the ascertainment and fixing of their values for the purpose of taxation exceedingly difficult and uncertain.

The method which has been adopted by some of the Western States, and by my own Territory, is to fix the valuation of a mine for purposes of taxation upon the basis of its production.

In some States the gross returns, and in others, the net proceeds are taken as the basis for the valuation of each mine.

This mode of assessment has been criticized upon the assumption that it defeats its own purpose, in that it violates those basic principles of assessment which are universally recognized in our various State Constitutions and Statutes and applied by our Courts, in that it destroys uniformity and results in inequality of valuation, not only as regards the assessment of individual mines, but as regards other species of property. It must be admitted that, unless it be the policy of the State to fix, for the purpose of taxation of mines, another standard than actual value, or unless the actual value of mines may not be determined by the ordinary methods applied to other species of property, no reason is presented why mines should not be assessed as other property. The history of this legislation does not disclose that any of the various legislatures which have adopted the method of determining the valuation of mines upon the basis of production had in mind anything more than the fixing of a convenient, and at the same time, an equitable method of assessment. Uniformity and equality of assessment rather than exemption from taxation has been the motive. Therefore, we need only consider whether this method does result in securing a nearer approach to such uniformity and equality than the ordinary method.

Theoretically, at least, under the ordinary method of assessment, all property, both real and personal, is to be taxed upon the basis of its cash value, which is defined by many Statutes to be "the value at which property would be taken in payment of a just debt from a solvent debtor," leaving the ascertainment of such cash value of such property to the taxing officer.

As I said at the outset, a mine differs from other real property in that its sole value depends upon its mineral contents, which is necessarily limited, and which at the same time is not capable of ascertainment, except through the expenditure of a great deal of time and money in the exploitation of its ore bodies in such a way as that they may be measured and their values determined.

For the purpose of taxation, under any mode, the speculative value of any species of property is theoretically dis-

regarded, and properly so, except where such speculative value is of such a character as to appreciably add to its market value. The situation of a town lot with reference to the growth of the town, although speculative, may give added market value to it, because experience may have shown that the increase and growth of the town to be such as will in the course of time, likely, give actual value to such lot in excess of its present value; and so with other species of real estate. The actual, and to some extent the future uses of such real estate are and may be taken into account for the purpose of taxation when they effect immediately its market value. In this sense mines have little or no speculative value. Indeed, they cannot properly be said to have a market value. This is so, because no two mines—I speak here of metalliferous mines—are alike in their mineral contents, either as to their size or value. No two veins or deposits are similar to the extent that the measurement of one may be taken as the measurement of another. Indeed, the exploration of one part of a vein, or of one part of an ore body, cannot be taken with any degree of certainty as indicating the size, extent, or value of another part of the same vein or ore body. So much is this true that sales of mining property for large sums are only made after the most exhaustive and thorough examination of such properties by experts skilled in measuring ore bodies, determining their values and passing upon their economic features, such as the cost of labor, transportation, the character of the ore and its treatment, and other considerations bearing upon such economic value. Nor, as a rule, will the results of one examination be taken as conclusive. Repeated examinations are the rule and the report of one expert is usually checked by that of another. After the most thorough and extensive examination and report, the actual value of mining property may, in some instances, fall far short, or in others, far exceed the values put upon such property after such expert examination. No prudent or experienced man will buy a mine upon any other basis than its actual showing in mineral contents, with a certain addition of ore, not in sight but assumed to exist, measured by the application of some arbitrary rule fixed by mining engineers.

In defense, therefore, of the system of taxation based

upon production it may be urged that the ordinary taxing officer has not the time, knowledge and skill, or the means of ascertaining the values of mining property in the only way by which such values may be approximated, i. e., by expert examination and testing of the mineral contents of each mine and the ascertainment of their value through the application of those rules for determing the economic value of such mineral contents which are applied by those skilled in the examination of mines for such purpose. It is urged that the ordinary assessor does not and cannot have or command such expert knowledge to permit of his making anything more than a guess at the value of any mine. Experience in most mining states bears out this contention. The assessment of individual mines is made in most instances in a more or less arbitrary manner and without any fair and just investigation and determination of actual values, as these actual values can be said to be capable of ascertainment by the methods in vogue among mining men. Many properties of great value escape taxation, while others are unduly assessed. There being no market value for mines and the whole matter being left to the discretion of assessors who are without the means of determining their value by actual examination and test, there must necessarily arise the charge of unfairness and discrimination on the part of such officers by owners of such property.

Again, the extraction of every pound of mineral from a mine *pro tanto* decreases its value. Unlike a farm yielding annual crops and which by ordinary methods of conservation indefinitely retains its productiveness; or, unlike a forest which when denuded of its timber may be reforested, a mine has a definite life and when once deprived of its minerals, ceases thereafter to have any value as such. Therefore, two elements go into the problem of ascertaining the value of a productive mine, one the amount of the original mineral contents, and the second the amount which have been taken therefrom. There is no question of accretion from year to year for the processes of nature are too slow to admit of any addition of value, nor is there any appreciable decrease in value by the same processes to be brought into account. The physical nature of the subject, the limitations upon the ability of taxing officers, and the uncertainty of results by the ordinary methods, and

the frequent instances of discrimination, wilful or otherwise, are the considerations which have led to the adoption of the scheme of assessment based upon production.

It must be admitted that this method is favored by the mining industry while more or less opposed by those engaged in other industries. Mining men, however, say that the opposition to this method grows out of want of experience or knowledge of mines and their values. They contend that there is no real test of the value of a mining property apart from its actual working and returns. That a mine is a thing of definite life, capable of producing only a fixed amount of the mineral which it yields, and differing in structure, size and value of its ore bodies so widely from others as to make individual exploration and exploitation essential to disclose its mineral contents, and to require skilled and experienced examination and testing, even when its mineral contents are exposed; and that therefore, the difficulties in the way of the ascertainment of the cash value of a mine are such as to make any other method of assessment than upon the basis of production unscientific, arbitrary and therefore unjust. That in most cases production is the surest test of value and that in the long run the system of ascertaining values upon production results in the largest measure of equality and fairest distribution of the burdens of taxation. That sooner or later every mine of value will be exploited and its mineral contents removed and marketed, and that as mines have fluctuating value from their very nature, this fluctuation based upon production is no greater than it would be were the actual value determined by expert examination during each taxing year, It is also urged that as a matter of actual practice few mines have what is termed ore in sight, that is to say, ore exposed in such a shape as to admit of definite measurement, in excess of a year's production, and that if speculative values be eliminated and only actual present values estimated, a physical examination of mines each year would not disclose values much, if any, in excess of the annual production. This, of course, has reference to those mines which are being worked and which are in the class of producing properties. It is further urged that the estimation of values from annual production and returns eliminates all speculation or all uncertainty as to the mineral contents which is inevit-

able where estimates are made in advance of the actual working tests.

It seems to me that a good case in favor of the assessment of mines upon the basis of production is thus made out, and that such method is justified although it is somewhat anomalous and differs widely from that applied to all other species of real estate.

It may be interesting to point out that about one-half of our western mining states and territories have adopted this method. I am under the impression that one or two States have adopted it and then discarded it. This method was adopted in my own Territory in 1907 and meets with general approval, although there was much and strong opposition to it at the time. The statutes of the various states which have adopted it differ somewhat as to the method of ascertaining values upon the production basis. In my own Territory the value is fixed at 5 per cent of the gross returns for the preceeding calendar year. This, of course, is exclusive of the improvements, such as hoists, hoist houses, mills, smelters, machinery and other appliances used in the operation of mines and in the disposition of their proceeds, as well as other improvements. These are separately assessed and their value ascertained as in the case of other property.

Whether the percentage as fixed by the Arizona statute be just or not is a matter which it is not my purpose to discuss. Assuming, however, that the legislative discretion in this behalf be wisely exercised it is my opinion that the assessment of mines—and by this I mean the mineral land considered apart from improvements thereon—on the basis of production results in the nearest possible approach to uniformity and equality of assessment.

I have mentioned the two ways of determining valuation for purpose of assessment upon the basis of production—one to take the gross valuation of the product of the mine for the preceding calendar year and the other to take the net returns—that is, the net value of the returns after deducting the cost of mining, freight and treatment. Personally, I prefer the former in that it is not so inquisitorial in its nature, and eliminates all questions of good or bad management from entering into the account. When net returns are made the

basis of calculation between two mines of approximate value and production, the one, by reason of economic methods and prudent management, may realize large profits, and hence pay a large tax, while the other, through bad methods and incompetent management, may yield small profits and pay relatively a smaller tax. Thus a premium is paid to incompetent and wasteful methods of mining.

It may be suggested that this method leaves non-productive mines of great value free from taxation. This is to some extent true, but this, after all, does not present any real difficulty when we consider that an unproductive mine is usually a source of expense, and if it contains known valuable ore bodies, which, under the ordinary methods of assessment, are subject to taxation, it will not be suffered to remain long in the unproductive class, and sooner or later, will be added to the assessment rolls, and, as the life of every mine is limited, will in the long run bear its burden of taxation and contribute its just share to the revenues of the State.

The Chairman.—Governor Carroll's paper having gone over until this afternoon, our next number is discussion and miscellaneous business.

Governor Fort.—Under that heading, I want to make a motion, before I may forget it; and that is that the Chair appoint a committee of three to edit the stenographic proceedings, with authority to publish the same, and with power to arrange about the cost.

In making it I want to say that there are no expenses for this meeting, except the stenographic expenses. This room is provided by the hotel. What the expense of getting these proceedings out and printing them will be, of course, will depend on how large a volume the proceedings make. The amount of the expense for the report of the proceedings was arranged with the stenographer, and the charge is the usual stenographic charge for such work.

Governor Hughes.—Are we to have copies?

Governor Fort.—My motion provides that the committee be directed to publish the same for the use of the governors and others. I thought we should indicate about how many copies of the proceedings should be published.

The Chairman.—There are a number of applications here for copies.

Governor Fort.—I suggest that a certain number should be sent each governor, say twenty, for his own personal use, and that we should send one to each state library, at least one if not two, and possibly to other places.

Governor Hughes.—I would suggest that before publication, the notes should be written out and submitted to your committee.

Governor Fort.—That is provided for in the resolution. The motion is to appoint a committee to edit the stenographic report of the proceedings, with authority to publish the same. Of course there are some things in these proceedings that we need not have printed, although they should be briefed and appear in the report of the conference. I do not refer to our own papers or to the discussions by the governors, because I think all the remarks of the governors should be printed as they have been presented at the conference; but I refer to other speeches that have been made, by those who have been invited to address us.

Governor Weeks.—Your motion is that the committee appointed shall first pay all the expenses. That means, I suppose, that after we know just what the expenses are, the different States will help out in the way of a little check.

The Chairman.—Is the motion of Governor Fort seconded?

The motion was seconded, and the question being taken the motion was agreed to.

The Chairman.—The Chair will appoint Governor Fort, Governor Weeks and Governor Brown.

(Note: Governor Sloan of Arizona was also added subsequently, as an additional member.)

Governor Shafroth.—Governor Hadley left last night for his State, and requested me to read to the conference the following telegram which he received, and to file it with the papers here:

Belton, Missouri, January 18, 1910.

"We would respectfully suggest that the Governors Convention consider the matter of recommending a uniform system of laws applying to all States whereby a better system

of public highways may be established. We heartily approve of Congressman Sulzer's plan of federal aid to the States for the betterment of our public highways system.

Respectfully yours,

The Mount Pleasant Township Rock Road Executive Committee.

By Joseph Weston, Chairman.

L. B. Harris, Sect'y.

Governor Shafroth.—(continuing): I want to offer a resolution. I don't know whether the conference would care to take it up now or refer it, and that is the reason I call it up at this time.

It seems to be so unanimously the opinion of the governors who spoke on water powers, that I believe we ought to crystalize into some sort of form a resolution relating to the matter, and I have written this:

"*Resolved*, that it is the sense of this conference that all water powers should remain in the control and under the jurisdiction of the respective States within which such water powers are situate."

I don't know whether there is any desire to vote upon the resolution now or to discuss it, or whether it will be thought best to refer it; but I believe that we should have a declaration upon that subject, and I have tried to make it as concise as I can. It has been discussed most thoroughly and so far as I am concerned I feel ready to pass upon it now. I don't think anything has been discussed so thoroughly as the question of the water, and if there is no objection I would like to move the adoption of the resolution.

Governor Hughes.—In regard to the resolution of Governor Shafroth, I sympathize with the intent of it. I call attention to the fact, however, that there are only a very few governors now present, and in voting for the adoption of that resolution or of a resolution with that intended purpose, I should desire, for my own part, to have it distinctly stated that it is assumed that in such control and in the exercise of such jurisdiction, the rights of the people of the States shall be permanently conserved and that such water powers

shall not be permitted to become the property or subject to the control of individuals or corporations.

My feeling about it is this; that while our opinion has been pretty well stated, I do not think that there is very much difference in view among us, yet in such an important matter as the adoption at a governors' conference of a resolution upon a subject about there which has been so much debate, we should be extremely careful, first, not to pass a resolution in the absence of a majority of the governors. There is really not a quorum present according to any rules—although we haven't any rules—and in the next place that no such resolution should be passed except that it expresses in the most guarded way, or rather in the most emphatic way, our resolve that these shall be conserved and that through State control, as opposed to National control. We are not thinking for a moment of facilitating private control—for that, personally, I absolutely am opposed to.

Governor Fort.—I think that this resolution can properly be phrased so that it will meet with general approval. I move that it be referred to the Governors of Colorado, New York and Kentucky, to report to this afternoon's session, such resolution as they may see fit.

The motion was seconded, and the question being taken the motion was agreed to.

Governor Kitchin.—I hope you will pardon me for a few words about extradition. I heard with great interest the paper of Governor Ansel, and I want to find if I can whether the Governors generally follow the rule as announced by the Governor of New York upon passing upon requisitions or extradition papers which were based upon an affidavit. His explanation made it plain to me why the State of North Carolina failed to receive one person who was charged with crime by affidavit. I believe it was for highway robbery, and the prosecuting officers thought he was a pretty bad man. As I recall it, that was upon an affidavit before a justice of the peace. In our State we have followed the rules that were recommended some twenty or twenty-five years ago by the Interstate Extradition Conference, and we have always granted requisition if the affidavit was in due form accompanied by the proper certificate under those rules made by the prose-

cuting officer. We were under the impression that those rules prevailed generally, and we thought that New York recognized them.

Referring to the case mentioned by Governor Ansel of the State against Hall, in which a man in North Carolina shot across the state line and killed a man in Tennessee, I will say that the State of North Carolina has amended its law since then and that man would now be tried for murder in the State of North Carolina. We also amended our extradition law after the experience in that case. But we gave in amending it more discretion to the Governor in cases covered by the amendment than he has under the extradition provided by the Constitution of the United States. We of course, retained the Constitutional extradition, we could not and did not desire to do otherwise.

The statutes of North Carolina now require the Governor to surrender a person charged with a crime in another state, and found within the State of North Carolina, whether a fugitive or not. But in the case of one not a fugitive, as I understand it, the Governor must be satisfied by proper evidence that the crime was committed by the person charged. Our courts have not had occasion as I recall to pass upon or construe this amended statute. Similar statutes might with great advantage to the administration of justice throughout the country be enacted in the other States. I heard of a case since I came here, in which a conspiracy to commit a crime in one State was formed and the crime was committed in another State. Under the ordinary extradition laws the State in which the crime was actually committed, could not reach the criminal, and the Governor of the State in which the person charged was, declined to deliver him. I believe under the law of my State we could not only try him for conspiracy in the State, but could surrender him for trial in the State of the commission of the crime. That is carrying out the idea that many States have enacted in regard to false pretenses.

I believe in many of the States now, if a man commits the crime of false pretense through the mail and obtains property in another State, he is guilty of false pretenses in the State in which he mailed his correspondence, as well as

in the other. But the particular thing I would like to know is whether the Governors generally pursue the course that Governor Hughes pursues in failing to recognize as a proper charge against a person, a charge in a simple affidavit made before a justice of the peace or magistrate. If some Governors do not recognize it, I do not know that any of us ought to. We ought to have uniformity in this matter. I believe those rules also provide that you will not return a fugitive unless the punishment in the State for which he is desired may be as much as twelve months imprisonment. I presume that all of you have a great many calls for requisitions where the crime committed is comparatively insignificant. I remember some time ago in my own experience I was applied to for a requisition upon the Governor of Virginia, in which the charge was that the defendant had fraudulently failed to pay a board bill of thirteen or fourteen dollars—the law of North Carolina making failure to pay a board bill with intent to defraud a misdemeanor. I didn't think it sufficiently important to justify requisition papers and especially as the solicitor declined to ask for it.

I don't think in our ordinary experience that anything that has been discussed here would be of more benefit to the Governors than the question of extradition. I don't know what I am going to do when the Governor of South Carolina calls on me in this case that I have in mind. Two of my people went over to work temporarily in the State of South Carolina and got in a fight and one shot the other, and they came back into North Carolina and the wounded man died. I understand that he has been indicted for murder in South Carolina. Under the North Carolina law, he is indictable now, and I believe there is a conflict of opinion in the courts of last resort in the several States whether he would be indictable for murder in South Carolina or not, since the wounded man did not die in that State.

I merely cite that as one instance that I think would be interesting, however this particular case may result.

I would be very glad personally, if the time permitted, to hear expressions from the various Governors as to their practice in extradition papers. I was very much interested in Governor Hughes' remarks.

Governor Hughes.—Before others express themselves in answer to that inquiry, I think there is a misapprehension in the Governor's mind as to what I said. I do not in any way disparage an affidavit made before a justice of the peace. Of course it ought to be made before a magistrate. That is one of the mistakes that frequently appear, that affidavits are made before notaries public instead of before a magistrate, and an affidavit in proper form before a justice of the peace is just as binding on the Governor as an indictment. The point I wanted to make was this; that an affidavit on information and belief from a legal standpoint is a worthless bit of paper. And nobody, it seems to me, should as Governor either request or honor the demand for a prisoner when all there is to show that a man should be removed from New York to Tennessee or California is the affidavit of some person on information and belief that the crime has been committed.

That, I believe, is clear on the authorities, and the reason why the point is taken is this. First, it is substantially just. Second, a governor does not desire to have his action at once repudiated by the courts, and any criminal who is taken under such a requisition before any Court would be at once discharged, and only the poor devil who cannot hire a lawyer to examine his papers will actually be returned in such a case.

But another point is this: whether a requisition should be honored upon an affidavit which in formal language simply says that a man has committed a crime, without showing any facts constituting the crime, without showing that the affiant knows anything about it or has any relation to the transaction from which knowledge could be fairly presumed—whether that should be regarded as a proper charge. It seems to me it is a very dangerous practice to have men removed from one jurisdiction to another on such a paper. It is always a simple matter for the demanding State to state enough facts to show that a crime has been committed, if an indictment has not been found.

Governor Weeks.—I want to give notice that the committee have selected Governor Davidson for chairman of the conference this afternoon, and I would like also to call attention to the fact that we have very important and interesting papers on the programme this afternoon—one by the

Governor of Massachusetts and one by the Governor of Iowa. I would like to ask all the Governors to request other Governors who are not here this morning to be present this afternoon if possible.

Governor Willson.—I want to present a matter for fear it passes over.

I have been greatly impressed with the kindness and care and patience that the committee on programme have given, and also the committee on arrangements and the committee on programmes for future meetings. I wish to express, first, my personal thanks and obligation to them for undertaking this at my request, but I do not think my personal thanks half pay them. I move, therefore, that the Conference of Governors thank the gentlemen who have arranged the programme, for their courtesy and for the care given to the programme.

The question was taken and the motion was agreed to

Governor Ansel.—I want to suggest, if you will allow me, that where a warrant is issued by a coroner after a jury of inquest, there is no affidavit at all. The jury has made its finding saying that John Jones came to his death at the hands of Tom Smith, and thereupon the warrant is issued. It has been my custom to send a certified copy of the finding of the jury along with the warrant that was issued upon it by the coroner.

Governor Hughes.—I do not want to take up too much time on this question, but these are very important points. There is nothing we have considered that deals with our daily work and routine to a greater extent.

That sort of an inquest, a coroner's inquest, frequently gives the most satisfactory evidence; but if you will look at the statute I doubt if you will find that it gives you jurisdiction. Of course if an affidavit is supported by the findings of a coroner's jury, that may be considered. For example, a man makes an affidavit on information and belief and he says, "The source of my information is the hearing before the coroner's jury and the copy of the testimony and the verdict of the jury." That may be given in support of the affidavit. But if you have nothing but the warrant and the verdict of the coroner's jury, as important as that may be,

in other aspects, if you will look at the statute, where will you find the jurisdiction?

Governor Kitchin.—I probably misunderstood Governor Hughes. I thought the point he made was that since the Constitution of the United States says a man must be charged with a crime, that the practice in New York was to hold it was not sufficient charge if the affidavit was made before a justice of the peace or magistrate, although it might have the proper certificates of the officers under the rules which I have referred to heretofore.

I will state that the affidavit is not upon information and belief, but it is just a State affidavit. While it does not state the sources of the affiant's information or his opportunities of knowledge about it, it is a clear-cut affidavit of the facts, and it ordinarily has the approval of the district attorney. The district attorney, under our law, before we grant or ask for such papers to make demand upon another Governor, the district attorney is required to examine it and to certify that the crime is properly charged. And I say under the opinion that the point was made that a charge before a justice of the peace was not a proper charge under the Constitution, having an idea that Governor Hughes thought an indictment was the proper evidence.

Governor Hughes.—Not at all. We grant probably half a dozen a week on affidavits in New York.

Governor Prouty.—Do you honor requisitions for paroled prisoners, where they have not been told to get outside the State?

Governor Hughes.—Yes.

Governor Ansel.—I do.

Governor Hughes.—In other words, a paroled prisoner who has either been charged to remain within the State or has not been expressly allowed to leave the State is within the jurisdiction of the State and is a fugitive if he goes beyond the control of the government of the State.

Governor Prouty.—When I parole a prisoner, I do not specify where he shall go—no restriction as to that. Now if he breaks his parole and goes to New York, would you honor a requisition?

Governor Hughes.—Yes; he is a fugitive from justice, and I would be glad to honor the requisition in the other case; but the trouble is he is not a fugitive.

The Chairman.—The Committee on Organization have recommended Governor Davidson as Chairman this afternoon, and that we meet promptly at 2:30 o'clock.

(Thereupon, at 1 o'clock, p. m., a recess was taken.)

AFTERNOON SESSION.

Met, pursuant to the taking of recess, at 2:45 p. m., Governor Davidson of Wisconsin in the chair.

The Chairman.—I wish to thank you for electing me as your presiding officer this afternoon. I feel that this conference has been of great benefit to all of us.

I did not come prepared to talk on any particular question. In fact, I did not expect to be with you at this conference on account of certain matters in our own state pertaining to the same subjects that we are discussing here. We are making inquiry in Wisconsin, today, through special committees created by our legislature, relative to the questions of control of water powers by the state; the state income tax law; a good roads law; an industrial insurance law; the improvement of our banking laws and educational system. I expected the committees would have filed their reports with me before this time.

Wisconsin has for a great many years, worked along the lines that have been discussed here. Because of this, I think it fitting,—and I extend to the governors in this gathering a formal invitation,—to hold our next conference in Wisconsin. I assure you we will take good care of you, should you decide to hold the next meeting in our state.

I believe that in meeting here to discuss different problems of government, we are to confine ourselves principally to state government and uniform legislation between the states.

We of Wisconsin have not been troubled by governmental interference. We will doubtless pass a law at our next legislative session to control water powers. We have probably gone farther along the line of controlling corporations than most of the other states,—not only railroad corporations, but we have a law on our statute books which controls every public utility corporation in Wisconsin. I wish to say that the administration of and the results from that law have been very successful and beneficial.

Another thing! We have probably gone farther than most of the states along the line of pure food legislation. I believe that a subject which ought to be considered by this conference. We have such stringent regulation that our wholesale dealers are somewhat hampered in doing business under the law. For instance, at the last session of the legislature, we passed an act to prevent the use of benzoate of soda as a preservative, and adopted a pure food standard. It is a matter that had been discussed and practically settled by a commission but the decision of that commission was not unanimous. We believed in our state that if there was any question in regard to it, we wanted to give the people the benefit of the doubt, and we now prohibit, absolutely, the use of benzoate of soda as a preservative.

It is my judgment that if the governors here present would take up this subject and cause to be enacted in their respective commonwealths legislation along these lines, the people of the different states would derive more genuine benefit than any subject that can come before us for discussion. The sale of adulterated foods should be prohibited, and no manufacturer or dealer permitted to label any product other than pure.

We have not considered in this conference the question of conservation of natural resources, except water powers, as I remember. In Wisconsin, we are very much interested in the preservation of the forests we have left. To that end we have established a forestry reserve and created a forestry commission. We have several hundred thousand acres, and are increasing from year to year.

We, also, have great water powers. We have a great industry in the manufacture of paper and pulp. Forty to fifty million dollars are invested in that industry alone. Every one

of our paper mills is operated by water power. We have granted charters continuously to individuals without question, and invariably the government has granted permits to build dams, with certain restrictions.

The proposition with us to-day is whether we shall add a franchise tax, so to speak, on these water powers. I recommended to the legislature of 1909 that twenty-five cents per horse power, be levied, as a tax, and increase it one cent a year. I believe that such a law would be beneficial to the people as a revenue producer, besides affording state control. We have, invariably, given away these franchises without the public receiving any revenue from them.

I do not wish to delay the conference longer. I am not on the programme to speak; I am simply here to preside this afternoon.

The next subject to be discussed is Automobiles and Their Regulation,—by Governor Draper of Massachusetts.

AUTOMOBILES AND THEIR REGULATION.

Governor Eben S. Draper of Massachusetts.

Mr. Chairman and gentlemen, I want to apologize before I begin for what I am afraid will be a very uninteresting paper.

I felt that when this subject was given to me to talk about it was necessary for me to go very much into detail, and I have done it, at what I am afraid will be the expense of interest to you gentlemen.

This question which I have been asked to speak about cannot be considered in a Commonwealth like Massachusetts without considering at the same time good roads and their construction by the State. Many years ago we began the construction of state highways in the Commonwealth of Massachusetts, and to-day we have something like 800 miles of state highways built under the supervision of the Highway Commission. These roads have cost the Commonwealth directly about five millions of dollars, in addition to what has

been contributed by cities and towns, the average per mile being between $6000 and $7000. The roads are not of exactly the same construction in all sections, being of gravel in some country roads and macadam generally. Where traffic is extra heavy, oil and tar are sometimes used in addition. These highways, I believe, are as good as any in the world, which means much.

Besides these state highways, so-called, we have about 150 miles of park roads, which are much more expensive to construct than are the state highways, being much wider and requiring somewhat different surfacing than do the regular state roads. The state highways are paid for originally by the Commonwealth, and the counties pay back 25 per cent. of the total amount. The cities and towns pay toward maintenance not over $50 per mile, and the State contributes the balance. The park roads are paid for by the metropolitan district and the Commonwealth each paying a certain percentage.

In addition to this, our cities and towns have a very large amount of mileage of roads connecting with our State highways and park boulevards all over the Commonwealth. The metropolitan district to which I have referred consists of territory extending some ten or fifteen miles in every direction from the center of the City of Boston, and embraces many residential towns and cities, as well as large manufacturing centers. Cambridge, Newton, Malden, Melrose, Chelsea, Everett, Quincy and various other places make up this metropolitan district, which has a population of more than 400,000 people outside the city limits of Boston, which itself has now something over 600,000 population.

Many improvements have been undertaken in this metropolitan district which are limited to it, and hence this district is charged specially for the construction of these park roads within the metropolitan district. The water works and sewerage system of these cities and towns are carried on at the present time as a metropolitan enterprise, each town or city paying its proportionate part of the entire expense.

The Commonwealth makes an annual appropriation, and has for several years past, of $500,000 for the construction of new state highways. In addition to this the Commission

is obliged to spend from $300,000 to $400,000 a year for the repairing and resurfacing of roads which have already been built, and this sum is not sufficient to keep them in as good condition as they should be.

With all this State property which has to be used in a very large degree by the owners of automobiles, it has become necessary to change old laws and make new ones which shall recognize the fact that the owners of these machines must help to keep in good condition this property which they do so much to destroy. The increase in the number of automobiles in our State has been very rapid. In 1903 the number of automobiles registered was 3241. In 1909 the number had gone up to 23,902, having increased more than seven fold in six years, and the above figures do not include motor cycles. This increase has not only been in number, but also in power. In 1903 only 14 per cent. of the number of registered automobiles were of a greater horse power than ten. In 1908, 78 per cent. were in excess of ten horse power. This is a very important matter to consider in the regulation of automobiles, as the higher the power the heavier the machine and the greater the speed the more the destruction to the roads over which it runs. It is probably true now that one half of all the automobiles in use are under 20 horse power, but the ratio is rapidly changing; the relative number of high power cars is increasing.

It will readily be seen that with this enormous number of machines which a few years ago did not exist in any form, our State roads have been subjected to a wear and tear formerly unknown, and this serves as one very important fact for attention in considering the regulations to be adopted for their use.

The number of accidents that ensue from the use of these machines is a very serious matter. In 1909 there were 1130 accidents, 314 of which were on country roads and 816 in city or town streets. There were 54 people killed and 989 injured as a result of these accidents, and this furnishes another and most important reason for the proper regulation of the running of such machines and a further regulation of the men who drive them.

In greater New York and Brooklyn, for the month of October, 1909, 11 persons were killed as a result of automobile accidents, and 29 were injured. In the same month ten persons were killed by trucks (motors and horses) and five persons were injured; and 12 persons were killed by street cars and 9 injured during this time, so that automobiles have come pretty nearly in the first place in the greatest city in the country as destroyers of human life.

With men and machines operating on our public highways and city streets which are capable of causing so much damage, the necessity for regulation is apparent. I shall quote largely from our present law in Massachusetts, as that exemplifies the best methods we know of lessening and regulating chauffeurs and automobiles.

Only professional chauffeurs and minors are at the present time regularly examined in Massachusetts for licenses. In 1909 there were 3473 persons examined, and the total number of examinations was 4629. The number failing on the first examination was 1098 and the number of persons failing to receive a license was 324. On January 10, 1910, there were 9915 professional chauffeurs' licenses in force. Those persons who were refused licenses failed three times at least, and they usually failed on the road test and proved themselves unfit to operate machines.

The Highway Commission of the Commonwealth, which is composed of three commissioners appointed by the Governor, has entire charge of the registration of motor vehicles, and applications may be made to this Commission for registration by the owner or any agent designated by him. Motor vehicles owned by non-residents of the Commonwealth can be operated on the highways of the State for a period not exceeding ten days without registration. For manufacturers or dealers there are special provisions made both in regard to registration and fees. All licenses and registrations are good for one year, ending December 31st.

All automobiles operated in the Commonwealth must have their register numbers displayed conspicuously on plates furnished by the Commission, and every motor cycle must have its number also displayed. Every motor vehicle of more than ten horse power must be provided with at least two

brakes, powerful in action and separated from each other. There are certain other minor details of construction which are required. The machines must be provided with suitable contrivances to prevent unnecessary noise and with a suitable bell, horn or other means of signaling and suitable lamps, which must be lighted at certain specified times—both front and rear lights being in use.

An applicant in order to operate a motor vehicle, has to pass such an examination as the Highway Commission shall determine, and no operator's license can be issued to a person under sixteen years of age. The licenses may be limited to a certain class of machines to be operated by certain applicants, but unless these limitations are in the licenses, a person licensed may operate any registered motor vehicle.

Special licenses are issued to chauffeurs, and to each chauffeur a metal badge must be issued; and no such license shall be given to any person less than 18 years of age. Persons less than 16 years of age may operate in a motor car if accompanied by a licensed chauffeur, but under such circumstances the licensed chauffeur shall be liable for the violation of any of the provisions of law.

Every person operating an automobile must carry his certificates of registration, except dealers, and every person operating a motor vehicle shall have the certificate of registration for such vehicle upon his person. No one can employ for hire as a chauffeur or operator any person not specially licensed. No chauffeur or operator can have on his person or on the machine anything which will interfere with his easy management of the vehicle; and he is not allowed to leave any such vehicle in a public street unattended, without locking or making it fast and effectively setting the brakes and stopping the motor of the vehicle.

When a person operating a motor vehicle approaches a horse or other animal being led or driven, which seems to be frightened, he shall not fail to stop if signaled so to do; and in approaching or passing cars of a street railway which have been stopped to allow passengers to alight, the operator must, if necessary for public safety, bring his machine to a full stop. Upon approaching a pedestrian or an intersecting way or curve where the operator's view is obstructed, every

person shall slow down and give a timely signal with his bell or horn. Any driver approaching a crossing shall slow down and keep to the right of the intersection of the centers of both ways, and operators of machines are specially prohibited from going through any way where notice is posted that such vehicles are excluded.

As to speed limits, no person shall operate a machine at any speed greater than is reasonable and proper, having regard to the traffic and the safety of the public. It shall be prima facie evidence of a rate of speed greater than is reasonable and proper if a motor vehicle is operated on any way not thickly settled at a speed exceeding twenty miles an hour for the distance of a quarter of a mile. It shall be prima facie evidence of an improper rate of speed if a motor vehicle is operated on any way inside a thickly settled or business part of a city or town at a speed exceeding fifteen miles an hour, and if approaching an intersecting way or in traversing a crossing or going around a corner or curve where the driver's sight may be interfered with at a rate of speed exceeding eight miles an hour.

The above are state regulations. The city council of a city or the selectmen of a town or boards of park commissioners may may make special regulations as to the use of such vehicles upon particular ways, and may exclude such vehicles altogether from certain ways, provided, however, that no such special regulation shall be effective unless it has been published in one or more newpapers or unless notice of the same is posted conspicuously by the city or town or by the park commissioners, nor until the Highway Commission shall have certified in writing after a public hearing that such regulation is consistent with the public interest, and no regulation shall be valid which excludes motor vehicles from any state highway or from any main highway leading from any city or town to another. Any person convicted of a violation of this act may be punished by a fine of not less than ten nor more than twenty-five dollars for the first offense, not less than twenty-five nor more than fifty dollars for the second offense and not less than fifty nor more than one hundred dollars for a subsequent offense, committed during any period of twelve months.

There are certain provisions for placing certain cases on

file, and upon a third conviction in the same calendar year the Highway Commission shall revoke the license of the person so convicted; and no new license shall be issued for at least thirty days after such conviction, nor at all except in the discretion of said Commission.

Any officer authorized to make arrests may arrest without a warrant. The Commission may suspend or revoke any certificate of registration issued to any person under the provisions referred, after due hearing, for any cause which it may deem sufficient,and may suspend the license of any operator or chauffeur in its discretion and without a hearing, and may order the license to be delivered to it if it has reason to believe that the holder is an improper or incompetent person to operate motor vehicles and is operating improperly, so as to endanger the public. Any person convicted of operating a motor vehicle after his license to operate has been suspended or revoked, or who deceives by improper numbers or license badges, shall be punished by a fine of not more than $100 or by imprisonment for a term of ten days, or by both such fine and imprisonment.

Any person who operates an automobile or motor cycle recklessly at any rate of speed or while under the influence of intoxicating liquor so that human life may be endangered, or who, after an accident, goes away without stopping and making himself known after causing injury to any person or property, or who uses a motor vehicle without authority, shall be punished by a fine of not more than $200 or by imprisonment for a term not exceeding six months, or by both such fine and imprisonment; and if a person be convicted a second time of operating an automobile while under the influence of liquor he shall be punished by a term of imprisonment, of not less than one year and not more than two years. His license shall also be revoked by the Commission.

Any person who refuses to stop and give his name and address when requested by a police officer, or who shall give a false name or false address, or who refuses on demand of such officer to produce his license or his certificate of registration, shall be punished by a fine of not less than twenty-five nor more than one hundred dollars.

Full court records are required to be kept in regard to all trials of automobile cases, and the abstract of such record shall be sent by the Court to the Highway Commission; and in all particularly bad cases the details of the cases shall be furnished to the Commission. The Highway Commission (or its secretary, if authorized by said Commission) may summon witnesses and may administer oaths and take testimony in regard to these matters and fees for the attendance and travel of witnesses will be the same as for witnesses before the Superior Court.

The courts shall have jurisdiction, upon the application of the Commission, to enforce all lawful orders of the Commission. The Commission appoints people to act as investigators and examiners and the said inspectors and examiners have and may exercise all the powers of constables, except the service of civil processes, including the power to arrest persons who violate the provisions of the act. The Commission may investigate the cause of any accident. The town and city officers may appoint suitable persons as special constables to enforce the laws, and the town and city authorities are expected to notify the Highway Commission forthwith of the particulars of any serious accident which happens within the limits of their respective cities or towns.

Whenever death results from any accident, the Commission shall suspend forthwith the license of the operator until after a hearing it determines that the accident occurred without fault on the part of the operator. No such operator shall be licensed again within six months after the date of suspension, nor at all thereafter except in the discretion of the Commission. The Commission may prepare rules and regulations from time to time governing the use and operation of motor vehicles, but such rules and regulations must be approved by the Governor and Council before they become operative, but they cannot regulate the speeds at which machines may run different from those established by law.

Every manufacturer, dealer and keeper of a garage is required to keep records of the times that machines enter and depart from the garage, with the operator's name. This enables an owner to find out when his machine is in the garage

and whether it is being operated without his consent, which, as has already been stated, is a crime.

The registration fees are $2 for every motor cycle; $5 for every commercial motor vehicle used solely as such, regardless of the horse power; five dollars for every automobile of less than twenty horsepower; ten dollars for the registration of every automobile of twenty horsepower and above, but less than thirty; fifteen dollars for every automobile of thirty horse power and above, but less than forty; twenty dollars for every automobile of forty horsepower and above, but less than fifty; and twenty-five dollars for every automobile of fifty horsepower and above. There are different arrangements for dealers, etc., which it is not necessary to mention, and also for non-residents. The Commission has authority to determine the power of machines.

An operator's license costs $2. An examination of an applicant for a license or for renewal of a license is $2, and proper charges are made for copies of registration, additional number of plates, etc.

The fees and fines received under the provisions of the law, together with all other fees, shall be paid monthly by the Secretary of the Commission into the Treasury of the Commonwealth, and used for the carrying out of the provisions of law, and the balance expended under the direction of the Commission for the maintenance of state highways in its discretion in addition to the other sums appropriated by the legislature for this purpose. The net receipts from the fees received in Massachusetts are expected to amount to about two hundred thousand dollars for 1910, which will be expended for the care of the state highways.

In 1909 there were 68 licenses revoked and 132 suspended. There were court prosecutions brought by the Commission's investigators in 33 cases, and there were 33 convictions under such actions. There were 44 cases where suspensions were made because somebody was killed in an accident, but in 31 of these cases the license was restored, after an investigation and hearing. During 1909 the Commission held hearings one day at least in each week for the entire day, hearing 155 cases. Its investigators reported upon 241 ac-

cident cases. The causes of suspension and revocation in 1909 were as follows: reckless driving, 81; under the influence of liquor, 23; accidents resulting in death, 44; improper operation, 10; refusal to stop after accidents, 8; convictions for over speeding, 11; taking cars without owner's consent, 13; sundry offenses, 10; a total of 200. There were 3892 convictions of people in the lower courts and 163 were found not guilty. There were 482 cases placed on file and 264 cases appealed. There were 2574 cases of complaints and convictions for overspeeding. There were fines amounting to over $39,000 collected in 1909.

We had last year a census taken of the state highway traffic, having in August an actual count of vehicles made at 237 stations, and in October at 240 stations on state highways, which were taken for fourteen hours a day. An account was also kept of certain main roads leading into Boston for 24 hours a day. We also had records made by the Metropolitan Park Commission, Boston Park Commission, etc. In the August census there were shown to be 37,591 horse drawn vehicles, and 27,309 automobiles. In October there were 34,423 horse drawn vehicles and 18,509 automobiles, so that in August the automobiles were 42 per cent. of the total number of vehicles and in October 35 per cent. In some sections the automobiles have averages 75 per cent of all the travel.

I have gone much more into the details of regulation than I had expected to, but I believe that there may be suggestions in all these regulations which may be of value to some of you. Automobiles in various forms have come to stay and are going to multiply in numbers and be used constantly more and more. Good roads and state highways are to be constructed by the States to a much greater extent in the future than they have been in the past.

It seems to me right and proper that one part of the regulation of automobiles should be a proper license fee, so that the owners of such vehicles should pay to the state a proper sum for the repair of the roads which they do so much to destroy. This can be easily arranged by a properly graded license fee. The use of automobiles being so general at present, it is necessary that they should be properly regulated, licensed

and controlled. These machines are put on our highways supplied with enormous power and capable of going at great speed. If handled by irresponsible or incompetent people, they are a menace to the lives of all other citizens, who have an equal right to the use of the highways. If properly controlled and run they are a great benefit and convenience to many people and a great pleasure to many others.

The proper basis for regulation, in my mind, is reckless driving. Were it possible to at all times determine what reckless driving is, I should say speed limits were unnecessary, because a machine may be driven recklessly at five miles an hour as well as fifty; but in the present development of the industry I believe it is necessary to have a proper speed limit established as primafacie evidence of law breaking.

The examination of all chauffeurs and operators of machines should be severe and thoroughly imposed. This should be in the hands of a commission which is familiar with the business and understands throughly what it is important for a chauffeur to know. The power of revoking and annulling licenses of chauffeurs and operators should be in the hands of this Commission. We have found in Massachusetts that this is a most potent influence in the proper restricting of operators. Many of these operators earn their living by running machines, and when their licenses are revoked they are out of business. A large percentage of the accidents happen while the machines are being run by so-called professional chauffeurs. There seems to be a peculiar effect produced upon persons who constantly operate an automobile, in that they soon become apparently incapable of realizing how fast they are going. The tendency of all professional chauffeurs is therefore to constantly run at higher speeds than is wise, and they are apparently unconcious of the fact that they are doing so. The suspension or revocation of a license appears to be a thoroughly good way to impress this necessity for proper operation upon their minds.

The records kept in garages have a very detering effect upon "joy riding", because with a proper law when an automobile is taken out without the consent of the owner, the person so operating it is guilty of a crime, and quite a large percentage of accidents occur from machines which are so operated, and

will continue to occur unless such a law is enforced. This garage record does not prevent the unlawful use of a private automobile, but the fact that a private automobile used without the owner's consent makes the operator a criminal, has a very deterrent influence. I do not know of any proper way to regulate the amount that should be charged for the use of automobiles in travelling from one state to another, but unless this travel is continued for a considerable length of time, or unless very peculiar conditions apply, I think no charge should be made. The regulations should be so arranged as to prevent reckless driving, and bring about a proper respect for the rights of people not using such machines, and should also bring to the State Treasury a proper amount of money to compensate for the destruction of property which they cause.

Governor Hughes.—Governor Draper, may I ask you to what extent the New England Governors have succeeded in developing uniform rules?

Governor Draper.—Well, they have done a great deal in that way. We have not got to a point where the rules and laws are absolutely uniform; but we are approaching it, and a great deal has been done in the last two or three years in that direction.

Governor Weeks.—Speaking of this paper of Governor Draper, and Governor Hughes' question about the uniform law, I suppose there are no three States that need uniform laws quite as much as New York, Connecticut and Massachusetts.

During the last session of the Connecticut Legislature, I don't know of any question that bothered the executive more than this new automobile bill. I took pains to get a draft of the New York law and the Massachusetts law. I feel sure that in a few years the New England States particularly will have to have uniform automobile laws.

In the State of Connecticut a foreign machine can use our roads for a period of ten days without taxation, but after that they must take out a license.

Governor Prouty.—One period of ten days or different periods of ten days?

Governor Weeks.—One period of ten days. To show the foreign machines that have passed through the State of Con-

necticut at the mouth of the Connecticut River last year, over ten thousand automobiles ferried across the mouth of the Connecticut River. Out of that number there were less than twenty-five hundred Connecticut machines; the other machines belonged in the States of New York and Massachusetts and other States. In goes without saying that most of those machines were high power machines, and as Governor Draper states, these are the machines that damage the roads.

I signed a bill, after a great deal of thought, appropriating out of our State treasury $750,000 a year to be spent in six years, on roads. I am not going to take the time of this conference, but the committee who have in charge the programme for the next conference I hope will give some time to this subject. It means financial life or death to a great many. The people of the State of Connecticut, or a number of them, have asked me to bring that question before the executives. If at our next conference in December we can get up a uniform law on automobiles, I think we will have paid our State for meeting in conferences, whether it is one day or six days.

I should like to ask Governor Draper how many plates his law requires on automobiles?

Governor Draper.—Two.

Governor Weeks.—Connecticut requires two; but some States require only one. You spoke about the charges that are made on automobiles, passing from one State to another. Have you any charge in the State of Massachusetts for foreign automobiles?

Governor Draper.—No; we have the same arrangement that you have; they can use our roads for ten days free of charge.

Governor Weeks.—I think we copied that law from you. I must say in traveling about I think the Massachusetts law is a good one, and the Massachusetts roads are good roads. I think there is no State in the Union that has paid more attention to the automobile and good roads laws than Massachusetts.

Governor Hughes.—How do you get along with the twenty-five miles-an-hour allowance?

Governor Weeks.—It is presumptive evidence only in case of excess of twenty-five miles an hour. It has worked very well. I think I signed that bill in July. Previous to that I

think we had a regulation limiting the speed to twelve miles in the city and twenty miles outside. But the Governor spoke in his paper of requiring an automobile to stop when a trolley car was ahead of it, that the machine should come to a full stop. I think I spent three hours on that point, listening to the attorneys of the automobilists in Connecticut, and I think it ought to be required that they should come to a full stop. I signed the bill providing for going at three miles an hour, and I am not a professional automobilist and I must confess I had to depend on those who knew more about it. At the next meeting I hope this question of automobilists will be discussed fully by all executives, because I think we can do our States no greater service than to make uniform automobile laws.

Last year I was pleased to meet gentlemen who came from the West in automobiles, touring the country. It is perplexing to know what the laws are when one is going across the continent, passing through many States. Gentlemen touring in that way of course have no desire or intention of violating any law, and sometimes when they are arrested they are most surprised to find out what some of the laws and regulations are upon which they have been held up.

Governor Prouty.—Up in Vermont we have very few automobiles. We are a law-abiding country. I have been arrested only once; that in Massachusetts when I was trying to get out of the State. But I think in Vermont we have taken rather an advance step in regard to automobile legislation, so far as the fee for licensing is concerned, and I think it is something worthy of consideration here. We go strictly according to the horse-power of the machine. The horse-power being determined by the Secretary of State, to whom the application for license is made.

We had a great deal of question as to just how much that license fee should be, but finally determined that it should be for a new machine a dollar a horse-power; for a machine that had been licensed for one year, seventy-five cents a horse-power and for a machine that had been licensed more than one year, fifty cents a horse-power.

That seems a large fee at first sight, but that fee is in lieu of all other taxes. We investigated the matter, and under

our system of taxation we found that probably two-thirds of the machines in our State were escaping taxation, that men bought a machine after the first of April and sold it before the first of the next April and so escaped taxation on that machine. I don't know how you gentlemen settle that in your States, but we all know that many men buy a machine every year and dispose of their old one.

That is the way it worked out with us. We decided that it was better to place such a license fee as would incur a proper amount of taxation. This met with much opposition from the automobilists; and we had some difficulty in the beginning, but to-day I think it is conceded that it is a good way to handle the matter.

The revenues derived from this taxation or license are all to be spent on the maintenance of the roads. That is, under the direction of the State Highway Commissioner. This money is distributed to take care of the little things about the roads which the Commissioner would not ordinarily take care of. We have found during this past year that it has been of great benefit, and the automobilists to-day believe in that law, they believe that they are receiving full value for what they pay.

Some of them think that the license is a little high, but I think on the whole that they are well satisfied with the law. Of course our system of road building is not what it is in New York, Massachusetts, Connecticut, Rhode Island and New Jersey; but we have to build roads according to our means, and we are making them of gravel.

I believe that it will be demonstrated that gravel roads are the best and most economical when properly constructed and when you get suitable materials. I believe they can be more easily taken care of and kept in good condition than any other roads that have yet been devised.

Our system of road building is one of co-operation—the State and the town co-operating. The State provides a fund for permanent roads and this fund is to be expended in conjunction with the towns, they voting a certain amount, the State appropriating an equal amount for that town; and the roads being built under the supervision of the State Highway Commission.

We are spending only about $250,000 a year in that way; but in comparison with the population and valuation of the different States, I feel that we are doing our share, and are making such progress that within the next five years we are going to have continuous State roads in nearly every section of our State.

We are not going in debt, not issuing bonds, as some other States are, for we believe in paying as we go. I feel that we are doing exceedingly well.

I give this information so that some of the poorer States may know what we are doing in Vermont; because not all the States are able to do what the great Empire State or the State of Massachusetts may be able to do.

I can simply say that I think our system is working out splendidly, and that we shall soon have a system of roads of which we will be proud, and to-day you may come to the State of Vermont and find suitable roads for your automobile in almost every section.

Governor Carroll.—About what do your gravel roads cost you per mile?

Governor Prouty.—The way we are doing it, it is pretty hard to tell exactly what they cost. We are simply taking up to-day the bad places in our roads. We do not make any long stretch of road in one place; but take up the worst places, the mud holes, the places that have been practically impassable, and they cost us anywhere from one thousand dollars to five thousand dollars a mile, according to conditions. But we are trying to put these little spots of road in so that the people may see what a good road is, and we are working up a sentiment for good roads which is going to be irresistible, in fact is irresistible at the present time.

Our speed regulations are practically the same as those in Massachusetts. But we have the same privilege for those coming in from another State, of ten days free time, as they do in Massachusetts and Connecticut.

We like to have people come to see us. We have a State there that we want outsiders to see the beauties of, and we may be situated a little different from New Jersey in that respect, that we want folks to get acquainted with us. So

we are glad to have them come there and stay ten days. If a foreigner comes in, we charge him only five dollars to stay two months. After that, we think if he wants to stay, he should be willing to pay for the privilege, and we charge him the same as our citizens.

Governor Fort.—Of course we are somewhat an Ishmaelite in this matter of automobiles in New Jersey; but we are in a position, we believe, that you will all come to; it is only a question of time. I don't know what New York gets from automobiles in the way of license fees, but this year we got $240,000.

We started building State roads, State aid roads, as we call them, something like twenty years ago. It has not been that long that we have been doing anything very much, but we began that far back, and at first we paid one-tenth of the cost of the roads, and the locality the balance. We now pay one-third from the State Treasury and the locality the balance.

We have 1400 miles in our little State of roads improved by State aid and 1400 miles of roads that have been built by the counties.

Last year the legislature created a State Highway Commission consisting of the Governor and the President of the Senate, the Speaker of the House and the State Road Commissioner, for the purpose of establishing in our State a system of highways running from county seat to county seat; and a boulevard along the Atlantic Ocean, a distance in all of 853 miles.

We have reached the point now where the maintenance of the highway is of more importance to us, a great deal more, than the construction of roads; and it is becoming so heavy upon the localities to maintain these roads that it is essential that something shall be devised to meet the situation. Therefore last year we passed a law placing all this revenue from automobiles in the hands of the State Road Commissioner, to repair at the expense of the State in whole or in part, as he might arrange with the various boards of chosen freeholders in the counties. In addition to that we appropriated $300,000 from the Treasury to aid in the construction of new roads—one third of the cost to be paid by the State, and that would

require an expenditure of $900,000 in the State for new roads if the entire appropriation of the State were exhausted.

The road problem cannot be separated from the automobile problem. I was a little late in getting here this afternoon, but I heard most of the paper of Governor Draper, and I want a copy of it.

The rates charged, the licenses, are a little higher in Massachusetts than they are in my State. In my State foreign automobiles paid $143,000 last year. Home automobiles, as you see, not quite so much, when you take the $245,000 as a gross. But you ought to remember, if you are disposed to criticise New Jersey from the little hillsides of Vermont, that we lie between New York and Philadelphia, and those who use our roads are those who have large and powerful machines, those who live in Philadelphia and New York, men of wealth and men of leisure, and they travel over our highways from New York to Philadelphia and for two months in the year they travel to our seacoast towns in large numbers. Many Philadelphians go to Atlantic City, every Friday and Saturday, and many of them go by automobile.

The result is that we found it necessary to maintain some sort of tax upon foreign automobiles. I think, and I have endeavored to bring it about—I have conferred with Governor Hughes upon the subject and talked to Governor Stewart about it—that we should have a conference between a few States at least with reference to automobile laws. Originally I had in mind seven states, suggesting that we start at Boston. My idea would be to have a conference and agree on some uniform law between all of these Eastern States. Whether we can do that or not I do not know. If we can get some uniform law, and if that will result in giving each State a small compensation for foreign automobiles, I think it will be quite satisfactory to our people. We are not just satisfied with our tax against foreign machines. Last year we adopted a law which provides for the payment of a tax of $1 for a machine coming into our State and remaining for eight days. I don't like that tax; it is too picayune, and if it had not happened that the legislature had adjourned at the time I do not think I should have approved the bill. It was one of the bills left in my hands and I did not think it best to veto it. It will

probably be repealed. It only produced $7000 of revenue last year. The recommendation of the Highway Commission this year is that that tax shall be abolished.

I am not sure that the horse-power method of taxing automobiles is the best. My judgment is that it should go largely on the weight of the machine. A machine that weighs 4,000 pounds, will do a great deal more damage to your highways than a machine of much less weight, say one ton in weight. These large trucks which Governor Draper says they tax only $5 are doing more damage to our highways, going out as they do from the department stores in New York and Philadelphia, loaded with merchandise, than any automobile used for pleasure.

Governor Weeks.—But they do not make any speed.

Governor Fort.—I understand that, but they have those tremendous spiked wheels that tear up our roads in a manner which is hard to realize unless one sees it.

Governor Weeks.—If they had the same sort of tires would not that remedy that?

Governor Fort—That would be different, then, but they do not put those on those heavy trucks. They not only carry goods from department stores, but all kinds of heavy freight, amounting to many tons in weight, and those trucks damage our roads to a great extent.

We are now considering the question of changing our rates. Our rate is $3 up to ten horse-power, as I recall it. We get no more than $15 from any machine.

Governor Draper.—We get as much as $25 for some machines.

Governor Fort.—I noticed in your paper you so stated. Our purpose is, if the recommendation of the Highway Commission is carried out, to increase our rate so that the lowest tax shall be $5, and all the rest shall be raised by one third, at least, in addition to what they are now paying, and with all machines that exceed two tons in weight we think the tax should be $25.

Gocernor Draper.—I hope the Governor will consider that question of weight pretty carefully, because there are several states that now have their license fees based on horse power. I think you get just as good results from that.

Governor Fort.—I am rather inclined personally to agree with you. Senator Frelinghuysen, who is the father of our automobile law, is on the Highway Commission and he is rather inclined to the weight standard.

Now, with regard to the gravel roads, we have both kinds of roads—gravel and macadam. In the southern end of our State we have very large deposits of gravel, near to where they are used on the highways. The best roads we have are the gravel roads. They seem to stand the wear and tear well, except in very dry weather, and they are much cheaper. Our macadam will average $10,000 a mile to construct, as we make it, and a gravel road will not exceed $5000 a mile in cost, and in some cases not over $3,000?

Governor Weeks.—What do you put on the gravel?

Governor Fort.—Nothing but the gravel—fine gravel on top. It is a perfect road.

Governor Carroll.—How many inches do you put on?

Governor Fort.—From ten to twelve inches. Our macadam is from 12 to 16 inches.

Governor Carroll.—And how many feet in width?

Governor Fort.—We run them different widths. Some of these highways are as wide as eighteen or twenty feet and some of them are only about twelve feet.

Governor Prouty.—Our roads are 21 feet.

Governor Fort.—While no doubt most of us travel faster than we should at times in automobiles, the question of speed is not so serious in the country. In fact the question of speed on a country road is often of very little consequence. For instance, in riding from Point Pleasant to Lakewood in our State, along what is called the Gould Road (built largely by Mr. Gould who lives at Lakewood) there is a stretch of road of many miles where there is not a single crossing, in fact there is no crossing for ten miles, right through the pine woods; of course you cannot expect a man to run at a speed of 15 miles an hour along that road, because there is no possible danger from going at a much higher speed. In the cities, of course, it is different.

The Chairman.—What speed have you in the cities?

Governor Fort.—In the cities we have a speed of not exceeding eight miles an hour; and in other places not exceeding

twelve miles an hour; where the houses are at least 100 feet apart; and in the country the speed limit is 25 miles an hour. The speed limit is observed very well. We do not get very many fines. About $3500 came into the Treasury last year in fines.

We have not as good enforcement of the law as I wish we had. I made recommendations on that subject in my message, with the hope the legislature would create a Commissioner of Motor Vehicles, and give him more power, and allow him a number of deputies.

Governor Draper made a true statement in his address when he said that the automobile was here to stay. I know no better form of enjoyment than to travel around the country in an automobile, and no better way to see the country. One of my friends rode from New Jersey to Seattle in his machine last year, and it is only a question of time when we shall quite generally go from one part of the country to another in automobiles, as soon as the roads are fitted for it. What we want to do is to build up these highways and get all the reasonable revenue we can, because the automobile man is able to pay and he ought to pay, and the roads ought to be kept up largely from the automobile license fees.

Put a light on every vehicle on the highways, and then let us have the automobile and get all the revenue we can from it, and thus have the best roads we can! (Applause).

Governor Weeks.—I think we can all look to Massachusetts on this matter of automobile laws, and with one exception I think I agree with the Massachusetts people. That one subject is in regard to taxation. We have in Connecticut in the neighborhood of $30,000,000 invested in automobiles. The taxation of automobiles was one of the serious questions. The automobile clubs took it up and it finally resulted in the conclusion that the best way to tax them was to make them pay so much per horse-power. We tax them 50 cents a horse power, and in that way each automobilist paid for what he had. The man who buys a machine then knows what is he going to be taxed. Except in regard to this one point I think the Massachusetts law could well be looked to as a model, and I give you the benefit of my examination of the subject when I express that opinion. I hope before the next meeting every

Governor will look into this matter and at the next meeting will give us at least five minutes talk upon it.

Governor Willson.—I would suggest for the benefit of all that in each of the states they have pamphlet laws printed for the use of officials.

Governor Fort.—Former Senator Dryden, President of the Prudential Insurance Company is here and he has asked me to offer a resolution which I have in my hand, which the Insurance Presidents of the United States who are now in session in this city have adopted. Senator Dryden asked me to present it but I wish him to present it himself, if you will permit him to do so, as he represents the various insurance companies.

The Chairman.—We will be pleased to hear the Senator.

Senator Dryden.—I have just a word to say in connection with this matter, explanatory of the reason of my being here and of this resolution.

The Association of Life Insurance Presidents has just adjourned sine die. The Committee on resolutions this noon, of which I had the honor of being Chairman, adopted this resolution, submitted it to the Convention this afternoon, and it was unanimously adopted by the Convention, and I have taken this occasion, without intending to personally intrude upon your time, to come here, and, as I expected, to present it through Governor Fort. But the Governor, in his good nature, has insisted that I should come in and that he would ask the privilege of my presenting it personally, and I thank him for the opportunity of doing so.

I will read this resolution, as it is very brief:

"Resolved, That the Association of Life Insurance Presidents presents its compliments to the Conference of Governors and congratulates them upon their determination to assist in securing uniformity in State statutes and respectfully asks that due consideration be given to the urgent need for uniformity in State Insurance Laws which relate directly to the interests of millions of citizens holding life insurance policies."

That is all Mr. Chairman, and I take pleasure in presenting this resolution to you gentlemen who represent the great States of our Union.

Governor Ansel.—I move we proceed with the next paper.

The Chairman.—If there is nothing further in the line of automobiles, we will proceed with the program. The next on the program is Governor Carroll's paper, Divorce and Divorce laws.

DIVORCE AND DIVORCE LAWS.

Governor Benjamin F. Carroll of Iowa.

Mr. Chairman and Governors: I have not asked the Committee who arranged your program why this subject was left for the last; but I apprehend that they had in mind that the hour of our separation was approaching and it would be an appropriate time to consider this question.

In the brief consideration that I shall give to the subject of "Divorce and Divorce Laws" I shall not hope to be able to bring to your attention any new phases of the question nor to present old ones in any new light. The subject has been discussed too frequently and written about too exhaustively for any but the most skilled and best informed to add materially to the scope of the discussions already had. I am indeed indebted to others for many of the suggestions which I shall offer.

Divorce and divorce laws are as old as the most civilized nations. From Sinai's summit the ancient Hebrews were given a law on divorcement and every statute enacted since that date has been but a modification of that law. I apprehend that there is no large number of people who would advocate the abandonment of all laws relating to divorce and that there are few, if any, of the better class of citizens who fail to recognize the evils of divorce. The question then that confronts us is how to provide for the granting of a decree of divorcement where there are sufficient reasons for so doing and yet be able to avoid the encouragement of the divorce habit and the obtaining of divorce where none should be granted.

In other words, what is desired to be accomplished is to remove the causes of divorcement in order that the evils thereof may be avoided.

First, let me suggest the grounds for which divorces may usually be obtained. In most all, if not in all states, divorces may be had because of adultery, desertion, inhuman treatment, habitual drunkenness, or conviction of a felony. Of course some of these causes are stated in general terms. Desertion must be a fixed period of time, varying in different states, as also felony ordinarily carries with it a provision as to character and length of punishment. Many of the States have other causes for which a divorce may be obtained.

It is an interesting fact that generally speaking more divorces in proportion to population and to the number of marriages are obtained in the more highly civilized countries than in those of less attainments along advanced lines of civilzation, and that the number obtained in our own country in recent years far exceeds those obtained a few decades ago. To illustrate, the number of divorces granted in the United States in proportion to the number of marriages during the last twenty years or more has been about one divorce to twelve marriages, while a generation ago the number was only about one to thirty-three or thirty-four. Again, the number of divorces obtained in the United States seems to be greater than in almost any other of the more highly civilized nations.

These things have led to the inquiring as to why people seek divorce. Is it due to the fact that society is endeavoring to purify itself or is it because of increased tendency toward those things which are low and degrading and is the divorce court resorted to as an aid to further evil designs? Answering these questions in a broad and general way it must be conceded that the increased and increasing number of divorces is due to an effort to rid society of existing evils or it must be admitted that our civilization has failed in one of the most important purposes of organized government, that of protecting and purifying the home life.

In an endeavor to answer these general inquiries those who have interested themselves in a discussion of the question have looked for more specific reasons for separations. Various causes have been assigned, all of which can be and are

supported by strong and even convincing arguments and the advocates of the different causes are more or less evenly divided.

The principal causes assigned for the large number of divorces are: bad laws, laxness in the administration of laws, lack of proper education as to marriage contracts and marriage relations, and bad laws relating to the subject of marriage. That the divorce laws of every State in the Union are more or less defective no one can, or will, deny and this fact augmented by the further fact of the lack of uniformity as to the general provisions of the laws of the various states, even of adjoining states, renders more defective the laws of all, inasmuch as persons residing in the state having the better and more effective statutes will and do remove to those with the more liberal laws in order that they may be taken advantage of for the purpose of obtaining a divorce. However, the more general opinion seems to be that the growing tendency to seek divorce is rather due to a laxness in administering the laws than to the weakness of the laws themselves.

The divorce laws of every state should be strict enough to discourage and prevent efforts to obtain a divorce, for any but grave and serious reasons, but should be liberal enough to right the gross wrongs of married life which cannot be remedied in other ways. In order, therefore, to determine when a decree of divorcement should be granted the real cause leading up to the asking therefore should be known. How to determine this is one of the points of disagreement. Some are strong advocates of a public and open investigation, even favoring a determination by a jury, while others favor a secret hearing or inquiry. The one evidently has in mind to get at the motive back of the application, in order to judge as to the merits of the case, overlooking in part at least the moral effect of a public hearing, while the other has an evident desire to save the individuals seeking separation from the humiliation of a public hearing and to protect the public against the evil effects of such a trial.

To my mind each of the methods is subject to criticism. Those upon whom the responsibility of determining as to the granting of a decree should have the fullest and most complete information as to all facts connected with every ap-

plication and these facts should be obtained in such manner as neither to unnecessarily involve the public nor to encourage the seeking of divorce because such action might be taken without publicity. Neither do I believe that the quiet appearance of the husband and wife in court by means of counsel and the granting of divorce practically without hearing or investigation has that restraining influence that should exist as to such matters. Would it not be better that every petition for a divorce, before being submitted to a court for decision, should be presented to the county attorney or other corresponding official or to a specially constituted commission which should thoroughly and impartially inquire into and investigate the merits of the case and present to the court all facts and information obtained, leaving the method of investigation or inquiry to the party having authority to make the same and having for the purpose of the inquiry the obtaining of facts and information rather than the observance of formalities. I am not unmindful that opinions are divided upon this point and that in all probability the majority would oppose this idea at least as to a commission. I do not wish to be understood as opposing the appearance in court of either party to a suit, properly represented by counsel, but only suggest the above method as a means of aiding the court in obtaining knowledge which ordinarily cannot be obtained under present methods.

While I have little hopes of our ever being able to secure the adoption of absolutely uniform laws as to divorce or any other subject, however much they may be desired, I, nevertheless, believe that there are many provisions of the law that might be made uniform. Among these I would at least include, the time of residence when parties remove from one state to another, the time within and conditions under which divorced persons may re-marry, and the causes for which divorces may be obtained. The question of residence has for many years been a disturbing element and has caused much changing about from state to state.

The subject of re-marriage is now a disturbing feature in my own state, the laws of Iowa providing that divorced persons cannot re-marry within less than one year after the obtaining of a decree, except by consent of the court, and

now one of our District Judges has raised the question as to whether that consent or permission must not be made a part of the decree and be given at the time the decree is rendered. But in any event the effect of such a law, unless other states have a similar requirement as to time of re-marriage, is to cause divorced parties to go to the state requiring the shortest period of time and there re-marry, returning to the state of their former residence at pleasure.

The same or like criticism might be offered as to the lack of uniform provisions as to causes for which a divorce may be obtained, the more liberal states often attracting this class of litigants from the states with the more rigid requirements. Then too the question of property rights may often become involved both as to this and the subject of the legality of re-marriage.

In passing it may be interesting to note that about sixty-six per cent. of all divorces granted are based upon applications made by the wives and that in only one class of cases or for only one cause, that of adultery, are more divorces granted upon complaint of the husband. Assuming that these figures represent the real facts with reference to matters of divorce which I concede only in part, the conclusions must be reached that the wives have greater cause for seeking divorce and that they are greater offenders as to unchasteness. No one perhaps will question the conclusion as to the first of the two, that is, that the wives have the greater and more just cause for wanting to be separated from their husbands and in my opinion there are none but what will decline to believe that adultery is more common among women than among men. The real situation as to that seems to be that our social life is such that the opportunuties for women to offend along these lines and escape detection are much fewer than with men.

One of the most distinguished jurists of my state in a recent address attributed the divorce evil to the marriage laws rather than to the divorce laws. This opinion I believe to be generally concurred in by those who have given most consideration to the subject. Among other things he said: "Marriage laws are so constructed as to permit those unfit to wed, because of venereal disease, insanity, crime or degenera-

cy, to pair at pleasure. The policy of the law throughout the Union seems to have been to encourage marriage at any cost. Children twelve to fourteen years old are allowed to marry. Minors whom the law considers too immature to make a binding contract for the slightest service or the most trivial article, are encouraged to bind themselves for life in this most important of all contracts."

At best only a small per cent. of marriage contracts entered into by such persons can be expected to prove satisfactory and permanent. The States beyond question have given too little attention to conditions rendering individuals unfit to assume the marital relation. There is no little sentiment in favor of legislation along the lines of restricting marriage with reference to hereditary insanity, habitual criminality and venereal disease. Scarcely a state in the Union but what has taken steps to eradicate tuberculosis and yet, while the number of persons affected with venereal diseases is said to exceed those having tuberculosis five to one, little if anything is being done to eradicate this most loathsome of all diseases, notwithstanding the fact that a large per cent. of divorces obtained are attributable to this cause alone. Neither has sufficient attention been given to the question of hereditary insanity nor to habitual criminality.

It is scarcely necessary to point out the evils of divorce, such as wrecked homes, increased prison population, increased numbers of insane patients and the lessening of respect for marriage vows. In one of my recent visits to an industrial or reform school, I was informed that a large per cent. of the children there came from divorced parents and that the home life is in the main the cause which leads the children astray. A study of insanity and criminology will readily disclose the evils of divorce as to these subjects as well as the evils of defective marriages.

As a general resume of what I have already said, permit me to inquire if it is not the duty of the state to protect its citizens, so far as is possible, against improper marriages rather than to furnish an escape therefrom by means of divorce. I would not abolish divorce laws, but would make them more effective, so as to provide a remedy where needed, but not to encourage a resort to the divorce courts. The only way

to protect our people against improper marriages, except as previously outlined, seems to be to adopt the oft-suggested remedies of better education and better marriage laws. Society owes it to itself that a higher regard and more careful consideration be given to these matters.

About four years ago there met in this city and if I mistake not, in this building, a convention in which practically every state in the Union was represented and at which the subject of a uniform divorce code was considered. A set of resolutions looking toward uniformity of laws was adopted. It contained many valuable provisions and was the result of much careful research and consideration.

I do not know the results of the efforts to get the things therein embodied enacted into law, but I recommend the subject matter thereof to this body as being worthy of consideration and valuable as a basis from which to work if anything along the lines of uniformity shall be undertaken. Some of the provisions were as follows:

That all suits should be brought in the state of the bona fide residence of one or the other of the parties.

That in cases of removal from one state to another for the purpose of commencing divorce proceedings, a residence of two years be required.

That when a divorce is obtained as last suggested, it shall be of no effect in the state of the applicant's first residence, if the cause for which the divorce was granted be not recognized by the laws of said first state.

That a divorce be not granted by any court to a citizen coming from another state, after the cause for complaint has arisen, if the state of the former residence does not recognize such case.

That no decree of divorcement be granted except upon affirmative proof, even though there be an agreement by the parties.

That fraud or collusion in obtaining a divorce be made a crime.

That divorced persons be not allowed to re-marry for at least one year after the granting of the decree.

I regard each of these provisions as reasonable and while their enactment into law, even if done by all of the states,

will not remove all of the evils pertaining to the subject of divorce, I am firmly convinced that such laws would greatly lessen the evils and reduce the number of cases of divorcement.

We cannot hope that these or any other statutes will entirely do away with the divorce courts. Neither should such be desired, but it is to be hoped that the number of divorces may be greatly reduced and that the causes which make divorce courts necessary, may be entirely removed. Such a condition, however, cannot be expected to obtain, even if our people were educated up to a point never yet attained by those of any country. But that education and proper modification of our divorce and marriage statutes will bring about very much better conditions as to the evils of divorce, I believe all will concede.

I have said in an earlier part of this paper that I have little hopes of our being able to secure absolutely uniform laws as to my subject. My lack of enthusiasm may be due to my own experience. For six years I was ex-officio insurance commissioner of the state and I well remember the efforts which the commissioners of the various states put forth to secure the adoption of a uniform code of insurance laws. I am not sure that any state adopted the uniform bill which we recommended at least without material changes, nor do I think that many states adopted even the uniform provisions suggested. We were, however, dealing with many large and organized interests and whose interests did not always lie in the same direction. In the enactment of divorce statutes no such conditions exist and no such opposition could arise.

It is true, however, that as yet no law of uniformity has been adopted by all of the states. The negotiable instruments act perhaps approached the nearest to entire uniformity. It seems to me that if uniformity could be had as to any law it might be accomplished and should be undertaken as to the subject here under consideration, and if not all of the states adopt such a statute it would be a long step in the right direction if any considerable number of them might do so.

I therefore most heartily join in the recommendation made to us by the Civic Federation Conference, through the Hon. Mr. Lowe and hope that the legislatures of the various states may interest themselves in a uniform divorce code.

Governor Willson.—In this connection I wish to say that the report of our Board of Control, which has charge of the charitable institutions for the insane and for feeble minded children, report that their records show that a great majority of the insane are there on account of hereditary causes, and that seemed to me a most impressive fact for us to consider in making some laws that shall stop the increase of those who are subject to that terrible affliction.

It seems to me that the time has come for civilized people to take affirmative action to make it a crime to risk breeding insane people. We ought to recognize the conditions that exist, and while following our humane feelings, still to apply relentlessly measures which shall decrease this evil and ultimately bring it to pass that it shall not go further.

Governor Shafroth.—I desire to ask some of the members who may have laws a little different from ours as to the operation of those laws in their States, and I don't know what States have the laws I have in mind. Nearly all the States, I believe, or at least a great many of them, have laws which provide that after a decree of divorce has been granted the parties shall not remarry for a term of one year from the granting of the decree. The result has been in our portion of the country, like that which Governor Carroll stated exists in his state, that when a person obtained a decree, instead of waiting the one year which it is provided by the statute shall be done, he or she goes to another state where there is no limitation of that kind imposed, or if there is a limitation imposed it is one of less time, and remarries. That is the condition as to a great many of the divorces in our State, and I have thought that perhaps a remedy might exist, by granting the decree absolutely only after a certain time, that the decree when first granted be considered a nisi decree, not a decree entitling the person to re-marry at all, until it was confirmed by the Court at, say, one year after the time of the granting of the nisi decree.

If that is the law in some of the states I would like to know how it is operated. I recognize that a large percentage of the divorces arise from the fact that people become somewhat out of harmony with each other in married life. They fall in love with somebody else and then immediately the desire

seizes them to get a divorce and remarry. If it were known that that remarriage could not possibly take place for a year, a good many of the divorces would not be instituted at all. I believe that would be one of the greatest checks upon seeking and obtaining divorces. If you remove the motive for securing the divorce, people will retain the family relation from the standpoint of pride or a better condition of the family. I think that will be the result if you make it impossible to remarry until a period of one year has elapsed after the granting of a nisi decree of divorce.

I am under the impression that some states have that law, and if there are any such states I would like to know the operation of that law, and whether divorces are frequent there and whether or not there is an evasion of that provision in any manner. Is that the law in your State, Governor Willson?

Governor Willson.—No sir; but it seems to me a very wise suggestion.

Governor Carroll.—I would like to ask a question, because I think it may bring out something that I would like to know. This paper has been very unsatisfactory to me because I knew nothing about the desire that I should prepare one until last week. I don't mean to say it was the fault of anybody, but I am simply stating it as a fact. So I have not had a chance to search the laws of other States. I know this conference which met here (the Convention which prepared a uniform divorce law) prepared a uniform law, and I thought by referring to that I would bring out the fact as to what States have adopted such a law. I think they named three or four States which four years ago had this one year requirement in their statute books; but I don't know at this time how many States have it, and I have not had an opportunity to find out. I would like to inquire whether anybody knows that.

Governor Fort.—Was that the conference called by Governor Pennypacker?

Governor Carroll.—Yes sir.

Governor Shafroth.—I was under the impression that several of the States had a law not only providing they should not marry for one year, but not granting absolute divorce.

Governor Sloan.—I think California has such a law.

Governor Spry.—We have such a law; but we only passed it a year ago.

Governor Shafroth.—It seems to me if we could have such a provision not granting absolute divorce until after a period of one year from the granting of the first decree, simply giving a nisi decree, that that would prevent much of the evil and prevent many of the divorce cases.

Governor Ansel.—I suppose South Carolina is unique on that question of divorce. All these troubles that you have on the question of divorces and remarriage can be avoided if you adopt the law of South Carolina, and that is that we do not grant any divorces. We have no divorce law in South Carolina and we will never have it. You can get married very easy in South Carolina but you can't get a divorce.

Governor Carroll.—Don't you grant divorces by the act of your legislature?

Governor Ansel.—No sir; they have to live together if they get married. It is regarded as a civil contract. When that contract is once made and the marriage is contracted it is for better or for worse as long as the parties live.

Governor Shallenberger.—I listened to the explanation of the Governor of Iowa as to the reasons of the Committee upon Program for selecting him to prepare the paper upon divorce, and while I do not think that any apology is due to us from him for the very interesting paper which he had read us, I also remember that at the outset of our meeting the Governor of Connecticut told us that the Committee had gone over the different subjects and had endeavored to select those Governors from states that would be particularly interested in the matters assigned to them.

Governor Weeks.—Pardon me for interrupting, but I said we had carefully gone over the country to get Governors for different subjects.

Governor Shallenberger.—I had wondered what there was about the state of Iowa or its governor that had caused his selection to prepare an address upon the subject of divorce.

Governor Carroll.—Because they knew it would hurt us less; we are not guilty.

Governor Shallenberger.—I have listened with great interest to the discussion upon the subject of uniform laws and other

questions that have come before this conference, and I have certainly gotten a great deal of valuable information from the splendid papers read and the addresses delivered by the gentlemen who have spoken to us. I wish, however, to raise the question if we have not carried almost too far this desire for unification or standardization of our laws. While uniform laws are to be desired, yet a thing more essential still is the enactment of the very best laws possible upon any given subject. Uniformity, it seems to me, is very often only another name for mediocrity. Upon this subject of uniform divorce laws, our friends in South Carolina seems to have reached the solution by not enacting any law whatever making divorce possible.

I also want to say one word as we are nearing the close of this convention, in support of something that was said by the Governor of Colorado, and that is to express the hope that at the next convention of Governors very grave consideration should be given to the question of expressing the judgment and conclusions of the conference upon the matters that shall come before it for discussion. And while it seems not to be the judgment of the majority of the governors here that it was wise to do so now, I insist that we ought to have the courage, as representatives of our sovereign states to stand for certain things that we all believe are essential to the welfare of our commonwealths.

I have listened with a great deal of interest to the papers read and to the remarks of the governors upon the laws and questions considered and it has all been wonderfully instructive, but it seems to me that the full force and power and effect upon public opinion that we should seek to achieve is not to be reached by the reading of papers or discussions among themselves here. The thought comes to me that this conference of Governors should be something to work for the greatness and welfare of the nation in the future, as well as for the interests of the individual states. If in our discussion the right and interests of the state to control water powers or upon this matter of uniform divorce laws or any other great question which is before the people, we should have the courage to take a definite position and express the majority opinion of the governors assembled here, we would be bound to become a

great power in the development of public opinion and a force that would compel action that would be of untold value to the states and to the nation in the future. I am fearful that we are a little timid of asserting our conclusions, and I believe unduly so. I think the country really expects us, as representatives of our several states, to register undeniably the public opinion of our several commonwealths by resolutions, and so I want to leave that thought with the Governors assembled here to consider earnestly if we have not gone too far in this matter of refusing to take a decided position upon some of these questions that are of such vital interest to our respective states. While I recognize that our power is only one that can be effective working through public opinion, and that the constitutional branches of our government may jealously regard what we do in conference, yet I feel that there is a wonderful power in this assemblage of Governors, if it shall be rightly exerted.

Our Government is yet in the springtime of youth, as nations go. There are many problems and powers that are not yet clearly defined between the federal and the state governments. I do not care to discuss such weighty subjects as these this afternoon, but I know of no forum where they can be more properly discussed than in the conference of Governors, and in making up our next program I hope the gentlemen who have it in charge, will bring before us some of these questions that are of vital interest to us in the development of our government upon which we have been touching here but briefly.

A wonderful future has been predicted here for the development of our water power and its use as a source of revenue, either for the state or the nation as explained to us by the Governors of Colorado and Wyoming, in those splendid addresses of theirs. We can see how essential it was to those states that the courts should so interpret their laws as to water rights, so that the highest essential use of water should be declared to be that of making fruitful the land rather than for the navigation of boats upon their rivers. The question as to whether the state or the national government shall receive the revenues derived from, and the control of our water powers should be quickly decided for the interest of all concerned. So it was with other great problems which we have barely touched upon.

While I do not wish to see any diminution of our papers or discussions I believe that in the future we should not hestitate to formulate and crystalize into express resolutions our thoughts and ideas, which voice the hopes and aspirations of the people of the state we represent and declare them in whatever manner we choose and so give to the people of the nation the accumulated judgment and wisdom of the executives of the several states of this Union upon the questions that may be discussed by the Governors in conference.

Governor Comer.—When you consider your meeting place for the next conference, you ought to come to Montgomery. We will give you flowers in December; we will show you a green park around the Capitol grounds; we will give you the prettiest place to look at you ever saw; and we will give you water, the clearest and best that you ever drank—we have prohibition, you know.

Before coming here I did not know along what lines this meeting would be run, and I supposed there would be some general discussion of general subjects, and I selected one to make a short talk on and prepared a paper, and I want to get it into the record.

Governor Ansel.—I move that Governor Comer be requested to furnish his paper to the Secretary and that it be printed in the proceedings.

Governor Burke.—I second the motion.

The question was taken and the motion was agreed to.

PAPER OF GOVERNOR COMER

The discussions, at our meeting last year, were along the lines of the natural resources of our country; their development, conservation and protection. The relation of the general government to these questions was incidentally touched upon and there was an evident tendency towards National control and State subordination.

At that time I endeavored to show that Alabama stood second to none in the extent of yellow pine and hard-wood for-

ests, and that we had made some progress toward the protection of this property. I also a empted to show that in mineral resources—lime rock, cement rock coal and iron ore—we stood among the first. The Birmingham district is rich in all these deposits both as to quantity and quality, and their development for domestic and commercial purposes has been found easy and profitable. Coke for combustion, lime rock for fluxing and iron ore for smelting are contiguous and make the manufacture of iron cheap. It was shown that our pig iron in quality, quantity, cheapness and economy of manufacture has not only met the markets of America, but has gone in competition with the world. It has gone to New Castle, demonstrating that our district is not entirely dependent upon home consumption or the tariff. It was also shown that steel rails made from the iron of this district by the basic process excel in enduring qualities and reliability the famous Bessemer steel rails.

It was further shown that our water-ways—the rivers connecting with the Gulf at the Port of Mobile and those which flow into the Apalachicola and Choctawhatchee Bays, all of which extend back into and throughout our whole State—are more in number and quantity of water than those of any other State, with the possible exception of the State of Louisiana. We lack only one thing—channel—we have the water. At our meeting last year I recommended and do now in the most earnest manner urge that our congressmen and senators and that you and yours favor most liberal appropriations for opening these channels that our waterways may be developed and made useful not only to our own state but to yours and the world. For ages, beyond the time of the Pilgrim Fathers, these rivers, unused and undeveloped have run down their courses. In a haphazard way the government has heretofore triggered with the job, spending quite a sum on Mobile Harbor on the Alabama and Warrior Rivers. Some six or seven million dollars has been expended in developing the Tennessee River, and yet we have an obstruction in the Muscle and Colbert shoals. If some consistent, economic work were done on this river, the navigation of which commences at Knoxville, Tennessee, it would enable the commerce of its whole length to be distributed easily and readily to the world. The Tennes-

see River with the Cumberland and Ohio make a great tributary of the Mississippi at Cairo. The Tennessee has as much water as the Cumberland and Ohio put together and is never choked with ice. If as many million dollars were conservatively spent on this r ver as on the Ohio, we would have Queen Cities at more places than one along its banks. This river connects with that great stream, the Mississippi, which President Taft, in a recent address, likened unto a magnificent woman of uncertain disposition. Upon this river it has been recommended that work and money of the government should be put to make it always navigable and freight carrying from Chicago to the Gulf of Mexico. The Tennessee thus binds with its long reach and strong waters a great section of our country, and if developed could reach thousands of miles and could materially effect commerce. The full extent of its possibilities reminds me of the story of a certain great missionary bishop, to Africa, who, making a return journey to see his people, became fatally sick at sea. On his deathbed he was asked if he desired to be buried back at home among the people he loved so well and he replied, "No, bury me at sea, so that the waves from my body may reach every shore." To the government I say, develop this great river that its commerce may reach every shore.

The Alabama, the Tombigbee and the Warrior reach a commerce which could and should be developed in an unstinted measure. If the channel at the Port of Mobile was made thirty feet deep and if the same amount of money was expended on these rivers, and the branches of the Warrior were made into canals and locks, as has been done in the Pittsburg District, so as to reach and serve the Birmingham District, then that section would furnish a life and tonnage that would startle not only America but the world. As to its possibilities, I would suggest to you the statement made by the Queen of Sheba to King Solomon.

Mr. Roosevelt—a great President—who was the leading spirit in our former conference, thought, as I understand, that the undeveloped power of our waterways should belong to the National government and that the government should maintain a lease-hold in their development. In this I differ with him, as I believe that the government has an easement in our

waterways respecting navigable qualities and rights; but the power is those waterways in riparian and should belong to the landlord. If, however, ownership in the undeveloped waterpower belongs to the government, then I say that the government should develop the water when it is in a section where it can and will be used in an economic and industrial way and should sell or lease it to consumers. In other words, instead of, as now claimed, leasing the right to develop the power of our rivers, the government should develop and lease or sell that power in the same manner as the government now develops the arid lands and leases and sells irrigation. This would be more economic and, instead of retarding, would accelerate development. The government, when building dams and locks for navigation, could construct a dam for developing power. This kind of construction would be better and more economic than leasing the power to individuals who would necessarily have to construct an additional dam for power development with reference to locks and navigation. If the State's integrity or sovereignty does not extend to the power in the stream, such an arrangement would maintain the integrity of the power in the government and secure the use of the power for the citizens and not lock it up in a trust.

For instance, in the Tennessee River we have the famous Muscle and Colbert Shoals, second only in power to Niagara. In the interest of navigation the government could construct dams and in the maintenance of their claims of power ownership, could lease the power to consumers, and could no doubt secure interest on a larger sum than was expended in the power construction and in the end would multiply consumers, citizens and wealth. All the way from Gadsden to Wetumpka, on the Coosa River, there is an immense undeveloped power which could be used in the same way. This plan would apply only to such water powers as has not been disposed of by the Government.

Of course such measures belong to a centralized government, in which I do not believe. I was reared on a farm in Alabama and am thoroughly imbued with the idea of the right of the State to control and dominate its own affairs and I steadfastly believe that this integrity of a state is the best and only

way of maintaining the integrity of our general government. If, however, we must become centralized and the Federal power is to be extended and the government owns the undeveloped water power in addition to the navigable easement, why should not the government develop and rent this power? This is certainly as tenable and is more secure against trust combinations and control than to lease the development of power to the lessor.

I view with alarm the suppression of State Courts, of State control of intra-state affairs and the evident tendency to make inter-state business of whatever description a matter of National charter and control. By such a policy the States would be stripped of authority and the National government would be put in more intimate relation with our larger properties and separated to a greater extent from the smaller properties. The breach between the trusts, whether public service or commercial, and the wage-earners would be widened and their present strained relations accentuated. Ordinary business claims against the larger properties would be practically unenforceable, almost as much so as if against a citizen of a foreign country. The friction between property and people would become belligerent, and we would have cause to expect a Cromwell or a Robespierre.

In a large measure these resources were discussed at our former meeting, but the greatest of all our resources to my mind was not touched upon—and that is agriculture and the agricultural population and how they should be maintained, developed and protected to the best possible advantage.

Mr. James J. Hill, President of the Northern Pacific Railroad, has bugled the alarm that the agricultural interest in comparison with other interests is on the wane and that there is a great tendency of the rural population to migrate to the cities. We all know that when the country youth develops talent, he does not remain on the farm but goes to the city, showing that supreme opportunity is not afforded by agricultural pursuits, but by professional and commercial life. Of you, my hearers, how many have gone from the country to the city? It is true that the poet sings and the press recites the "glories of the country"

Tityre, tu patulae recubans sub tegmine fagi
Silvestrem tenui musam meditaris avena;
Nos patriae fines et dulcia linquimus arva."

was sung by Virgil more than two thousand years ago and it looks as if there were true philosophy in it. The exodus should be from the cities to the country, and yet while we all sing the praises of the country, when we leave it, we never go back there to live.

Since the vigor of the nation and the necessities of life depend upon agricultural and not commercial nor professional pursuits, the aphorism of all time is that agricultural decadence is national decadence. The countryman has ever been the driving force as well as the balance wheel in our government. He is the electricity in the air that a Marconi must find. He is the organized battalion, unseen it is true, because we do not see and appreciate the friendly, tremendous forces such as Elisha at Dothan showed his servant.

For years and years our laws have been extended further and further around our infant commercial industries, protecting them and taxing other industries for them—building them up until they have become giants. But here in the country is the hitherto unfavored industry of safe, sane citizenship and I direct your attention to it and urge you to give this industry your special care and protection and let it become the infant industry of the future.

Mr. Hill has said that American Agriculture has not kept pace with the population. Mr. Wilson, secretary of Agriculture, states that agricultural labor is underpaid. Whether intentional or not, Mr. Wilson has put his finger on the weak spot in our body politic and in the political economy of our people and nation. Both of these men had reference to that labor which produces grain. I will inject into their statements that labor which produces cotton and will state from practical knowledge that this is the most underpaid labor in America, and with the exception of Coolie labor, is the most underpaid in the world, I will further state that our general political platforms declaring for the protection of labor have no reference or application to the cotton producing labor. While I do not wish to inject a tariff discussion into this meet-

ing, I will nevertheless call your attention to the fact that the labor which produces cotton pays every tariff and sells every product on the free markets of the world.

It is often asked why immigration does not turn toward the cotton section, of the South. This is considered one of the problems of our government and Nation. We have the water, we have the health, we have the climate, and, notwithstanding statements to the contrary, we have law and order, educational and church facilities and every surrounding which belongs to a christianized and civilized citizenship.

Secretary Wilson, putting his hand on Western agricultural labor, says it is underpaid. Mr Hill says there is a tendency towards a comparative decrease in agricultural products. The underpaid labor in the cotton fields of the South accentuates the statements of Mr. Hill and Mr. Wilson and verifies my position in declaring that our dearth of immigrants is caused by the poverty of the earnings of the laborer. Some people claim that cotton can be produced at six cents a pound. This would be thirty dollars a bale. In an average good year an adult laborer would make four bales of cotton, which at six cents a pound, would give him $120 for his year's labor—about forty cents a day. At twelve cents a pound, he would receive $240 a year, or eighty cents a day. If he could receive sixteen cents a pound, a price at which cotton is now, after a very short crop, selling for the first time in years, he would receive only $360 a year, or $1.20 a day. The cotton crop, world-wide in importance, most necessary to the manufacturer and to America—how many times has the price of it saved Wall street and kept the gold reserve intact—could be made more bounteous, less doubtful as to supply, if we could get what the manufacturer least wants, a higher price for our product. In return, we would give what the manufacturer most needs,—a bountiful supply. If cotton sold for a better price, it would insure better paid labor in the making of it. It would mean a higher class of field labor and better care for such labor. Naturally this would attract the current of immigration towards this section and bring better conditions not alone to it, but to every section.

The cotton South, as you known, has been treated in a large measure as a colony. In this assembly here we meet as equals

but this is the only place in the government that we do. We are the only part that ever paid a tax on agricultural products, and while the government has been returning every improper and illegal charge, it has never returned this, though it is millions and we need it. How are we going to help the farmers and the farm laborer? Remove the burdens placed upon them. Binding twine has been placed on the free list and this has helped the Western farmer that much. Cotton bagging has been placed on the tariff list and that hurts the Southern farmer that much. It is easy to see that the more tariff that is put on everything that the farmer uses, the more the price of his labor and his earnings is decreased. If the cotton South was in fact a province—a Porto Rico or Philippine—it would be a good State policy, considering the aeons of future with regard to which every governmental theory is properly based—to make it as prosperous as possible. It is urged that one of the greatest designs of the tariff is the protection of American labor, securing and maintaining for it a fair price. The immense corporate wealth of the so-called tariff barons, the great increase in the army of socialists, and the underpaid condition of agricultural labor disproves the equality and justice of this theory. When the laws are being made or the policy outlined, the tariff beneficiary always gets a hearing and assists in the fashioning. The man who takes the other side of the question becomes a demagogue or an insurgent. It is true that manufacturing labor is in a measure benefitted, but farm labor is injured by a tariff tax. The farms are the great hatchery of labor and largely of progressive manhood and citizenship and just as their condition becomes in comparison worse than conditions elsewhere, the farm laborer migrates. If by improved conditions these migrators could be held on the farm, then the competition of this class with other classes of labor would stop. Industrial labor itself, with this labor tide withdrawn, would, on supply and demand, which must control, get a better price—would naturally drift into better conditions, and with gathering improvement tend to stop socialism. If the complaint of Secretary Wilson is met and legislation commenced to secure better conditions for agricultural labor, if by no other means than withdrawing the charges placed upon it, our farmers instead of decreasing

would increase in number and keep pace with the other classes. In the future the kodak would picture our agricultural friends not as hay-seeds, doodle-blowers and hill-billies, but as citizens the equal of any. By legislation we have builded great wealth in the hands of a few. And the more insatiate of the beneficiaries of class legislation have not been content with the millions thus secured, but have, by means of false scales, and trust formation, attempted to secure other millions, Unquestionably the time has come, if we intend to maintain the integrity of our government, to gather the Brobdignags and give the Lilliputians a chance.

Neither would I inject a discussion of temperance into this meeting. However some of our States have State-wide prohibition laws and others have prohibition with counties as units. In all dry sections, whether county or State, the federal government continues to issue licenses for the sale of liquor. Mr. Hill of the Northern Pacific Railroad, issued an order prohibiting the employment of any man who drank and ordering the discharge of any man in the employ of the road who drank. No one questions his right to do this. Many great industries have found this a prudent course in their business. No one questions the right of a state to establish prohibition. In view of this, is it right for the federal government to issue licenses for the sale of liquor in a dry territory? Since 1885 physiology and hygiene has been taught in Alabama schools and the evil effects of alcohol on the human system has been particularly impressed upon the youth of the State. Our State, in conjunction with the government, is sending experts to eradicate the cattle tick from cattle. This is done because it is believed that ticks hurt cattle. Alabama is teaching in its schools the ill-effects of liquor and has prohibited its sale (and we all know that liquor hurts our boys and girls more than ticks hurt cattle). How impossible of vindication is the government's assumed right to sell licenses for the sale of liquor in dry territory? With the same propriety it might sell licenses to distribute ticks. Many employment bureaus have said there is no demand in the field of labor for men addicted to the liquor habit. If, therefore, Alabama or any other State is trying by instruction and by law to prepare its youth in the highest degree to meet any re-

quirement in the great struggle of life, what right has the government to try to prevent it? This enters into the protection of our greatest infant industry—the babyhood of the land.

Governor Brown.—I hope that preparatory to the next meeting, somebody will be requested to prepare a paper in connection with the growing tendency of the people throughout the country to leave the farms and move to the cities. To my mind one of the greatest evils in producing the present high prices is an increase in urban population. As long as we had 70 or 80 per cent. of the population in agriculture, they could support themselves and raise a surplus which could be sold at a reasonable sum to those engaged in the factories or other occupations, lawyers, doctors and so on. But in my own State of Georgia the decrease in the farms in the last two years has been phenomenal. We need more wheat and other grains. We are approaching the stage where we cannot raise enormous amounts of cotton on land which ought in a measure be devoted to grain and other crops. The great west used to be a term that would indicate something empty. Now it is filling up like the East and the West is needing its own acres to support itself. Therefore, we must begin to turn our people's minds to scientific fertilization, and things of that kind, in addition to taking in more acreage.

I hope very much that Governor Comer's suggestion will be followed and that that will be made a central thought in the meeting a year from now.

Governor Willson.—I regret to get up again, but being on the Commiittee for Subjects the next time, the last time I wrote and asked each Governor to suggest subjects that would be interesting to them, so we could get expressions from a number, and those subjects which had the greatest number of requests would be the most likely to be considered favorably, and put on the program; and so as the conference this morning selected me as a member of the Program Committee, in order to get this word to all before we separate, I would like to ask that just as soon as we get settled down in our respective States, the Governors write to the members of the Committee—Governor Hadley, Governor Ansel and myself—the things they wish discussed. In that way, we can find

out what you are interested in. We only wish to carry out the wishes of the Governors and to get them in shape, and to bring up for consideration those things which most Governors wish to consider.

We all have felt the value of what has been said here. I wish to say one word, because it bears on a committee that has been appointed—not to anticipate their report at all—and suggested by the interesting remarks made just now about reaching a conclusion about some of these questions.

It is a tendency of any intelligent man to express his opinion on any subject which he has considered. That is one thing. Talking as a Governor is another thing. As Governors it is within our legitimate sphere to carry from here things which we may recommend to our legislatures. I have a right to say to the Legislature of the State of Kentucky. "This is the State of affairs that exists and I recommend so and so;" and they have the right then to do as they please about it. It is a power I have as Governor to recommend to them. But I have not the slightest power or authority, except as every other individual citizen, to tell Congress what to do. When I say anything to Congress, it is Mr. Willson and not the Governor of Kentucky. When you say anything to Congress, it is the gentleman from Georgia or the gentleman from Idaho, as the case may be, and not the Governor; for the Governor has no authority on earth except as an individual, to express his wishes to Congress. The President is the Governor to talk to Congress.

Governor Brown.—I am nothing but one of the citizens of the seventh Congressional District of Georgia when I speak to Congress.

Governor Willson—Yes. Now, then, again, the Senate has the right to impose rules on its members, and political caucuses organize and impose obedience on those who attend and submit to the caucus; but the Governors have no such caucus, and I do not believe the Governors need any, I don't believe they wish any. For instance, it has gone to the world that everybody who spoke here was in favor of upholding the states' rights in the water powers. It was rather remarkable, I think, that the Governor of every State representing every section of the country, should agree in that

matter. Suppose we had adopted a resolution and twenty-nine had voted for it and one against it. I don't believe the moral effect would have been half what the effect has been now. This conference has two spheres of action; the one is that we are here to learn—and every one of us has learned enough to pay our State ten times over if the State paid our expenses to Washington (my State did not pay my expenses; I came for the learning and I paid my own expenses and I am glad to do it, although it would be a considerable item to me if the State paid them)—that is one sphere of action, to learn. The extension of it is that when we, as Governors, learn something here, we take it to our general assemblies. If I had a chance in my general assembly, I would give them today about twenty subjects. By the time I get home there will be eight or ten left. Of course, one must sift out the different things that are brought up; but there are a number of things that have come up here, which I desire to submit to our general assembly as soon as I can. Just now, our assembly is in its third week. I believe I shall serve the State in presenting to them some of the things that have been brought to my mind, that had not begun to take shape before I came here.

I believe that while we have no legal jurisdiction, except in our communications to our own legislatures, we have learned here things that will be useful in making us better equipped for work as Governors. I have often regretted that there is no school for Governors. Before I was inaugurated, I felt that I should attend a school for Governors, if there were such a thing. There has not been a day that I have not had the need of knowing some things which I have learned here. I feel, therefore, very grateful to my brothers here for many of the suggestions, and wish I had known them before I came to the responsibility of the Governor's chair. I came from a law office and as a worker without experience in legislation, and have a thousand times felt the need of greater information.

Governor Hughes.—I share the feelings of the Governor of Kentucky with regard to the value of these meetings. I feel, myself, that every hour has been full of instruction, As we depart, there are some things which it seems to me we

should bear upon our minds. There are certain drafts of uniform laws which have received very careful consideration by appointed commissioners; they have been recommended by bar associations; they have been specifically brought to our attention by the National Civic Federation.

I don't suppose that any of the Governors present have had the opportunity to examine those drafts in such a way that they would care to commit themselves to their approval; but it does seem to me that we should not forget the fact that such drafts have been prepared, or our responsibility with regard to them and the importance of urging their adoption by our respective States in case they meet the approval of our judgment after examination. I should hope that the States that have not yet adopted the negotiable instruments law would at as early a date as possible secure the examination of that law, which has been passed upon, I believe in some thirty-eight jurisdictions, and if they have no objection or if the Governors find no objection thereto, that recommendation should be made to the legislatures for its adoption, with proper emphasis upon the importance of uniformity with respect to that commercial subject.

Similarly with regard to the other laws relating to instruments used in commerce, where the drafts have been carefully prepared and submitted for our examination, we should not wait for others to take the initiative. The Commissioners have taken it. Lawyers have given their time to the work. Distinguished citizens have brought these drafts to our attention and tried to impress upon us the importance of the passage of these laws.

Now, without any resolution on the subject or any attempt to commit any one who has not examined them, it seems to me that each one of us should leave here feeling that it is one of our first duties to look into these uniform laws and either recommend them to our legislatures, if they have not already been passed, or to know why we do not recommend them. If we find that our objections are sufficiently important to weigh against the desirability of uniformity, then we should come to the next conference with the objections, to the end that the drafts may be altered if the present form is objecttionable, so that uniformity in these matters as to which there

are no real differences of interest may be attained as soon as possible.

If we do not do this, we shall meet in conference next November and other citizens will address us on the importance of uniformity in these laws; the report from our legislatures will be substantially the same; and we can go around year after year without accomplishing anything.

The first specific thing for us to do, it seems to me, is to make a note of what these uniform laws are that have been drafted, to charge our mind with them, get copies of them, find out whether we indorse them or not; and if we do indorse them, recommend them. And then, if objections come in from our legislative assemblies and they do not pass them, we should ascertain how weighty those objections are. If we object to them, then let us bring our objections here at the next conference and thresh them out.

Now, with regard to matters which do not lie within the scope of proposed drafts of legislative measures, there, it seems to me, our study has been much stimulated by what has taken place here. We are better prepared than we were a few days ago to enter upon the consideration of many important topics that have been discussed, and I sincerely hope that the Committee on Arrangments will avail itself of its full power under the resolution adopted to appoint as many sub-committees as may be needed to work out some satisfactory scheme of examination with regard to some of the topics that may be selected; so that when we come together next fall we may have, so far as possible, specific recommendations.

I am in entire accord with what Governor Willson says as to the scope of our action; but even though we may not be able to bind ourselves, in our official capacity, much less to bind our States, we can develop an important sentiment and a harmony of thought with regard to matters that we have carefully studied, and where committees of Governors have worked out the material in such a way that they are prepared to say "This law ought to be passed; this measure should be adopted", we can take up such recommendations in the same way we take up these uniform laws, and go to our states and say, "We are for this", or, if not, why not.

We can see whether our judgment meets with such objections and such opposing argument that we should modify it, or are confirmed in it. In other words, we can take up in the interval these uniform laws, we can endeavor to have the machinery we have provided utilized to bring a number of our discussions and papers and considerations to the point of specific recommendation, and in that way, in the course of time, we shall greatly enlarge the harmony of action between the States, maintain the dignity of the States, conserve their just rights, without transgressing our province as State Executives, or without usurping the functions of the Federal Congress.

I desire to say, in conclusion, that next fall doubtless a number of Governors will be chosen and our meeting is to be held shortly after the next general election, before many of those Governors will have been inducted into office. I therefore, move, Mr. Chairman, that all Governors who may be elected at the next general election, be invited to participate in the next general conference.

The motion was numerously seconded, and the question being taken, the motion was unanimously agreed to.

Governor Carroll.—I concur in all that Governor Hughes has suggested in regard to uniformity; but I think that we can turn our attention so completely towards uniformity that we will lose a great deal that we might gain by dividing our attention between that and some other things that I am going to suggest to you.

Along the line of uniformity, in the paper which I read to you, I told you that I had been an insurance commissioner of my State, ex officio, for a number of years. Governor Hughes knows, as many others know, that we spent not only weeks but months as insurance commissioners, meeting time and time again. We prepared uniform insurance bills touching practically every kind and class of insurance. My impression is that few States adopted any of the laws we recommended.

Now, some of them took them almost in their entirety, perhaps a number of States did that. But here is one difficulty. As I remember it now, one of our neighboring States made a vigorous campaign on the subject of whether they

should elect or appoint a railway commission, and finally adopted the Iowa plan of electing a railway commission. Now, we are trying to do away with that, because it has proved unsatisfactory.

So, when we present uniform bills on any subject, we may find that as a matter of fact the experience of some State which has tried such a law is against it, and that State will not adopt such a law again; you cannot get it to adopt it.

We may adopt uniform provisions, if it is desirable, as to many things on which we ought to have verbal uniformity. If we can get it as to negotiable instruments, that ought to be done, and I think to a great extent that is practicable. That is practicable, I think, as to a number of subjects. Our civic federation conference is composed of members who are enthusiasts, and they are carrying some things too far. We ought not to to adopt all these things that they have recommended, because many of them are impracticable.

Suppose we should attempt to adopt a uniform law in regard to water power. A thing that would suit the western States would not work at all in Iowa, for instance. We could not adopt it, it would be impracticable. So it can be seen that only in the case of certain laws is uniformity particularly desirable. So far as practicable, we ought to have uniformity. But I want to say that there are some things that I should like to see come about in the State of Iowa while I am the Executive, things I know we cannot get if we wait for uniformity. We do hope to adopt some uniform statutes; but I should prefer to understand fully and be able to recommend intelligently to my legislature, some things with reference to advanced legislation that some of the States have already adopted. I was intending to suggest to the committee two subjects that have only been discussed incidentally here, and perhaps one of them not at all, that I should like to see made important at our next conference. One of them is the subject of a public utilities commission. I should like to see you put on, as a man to handle that paper, some Governor of a State where they have such a law? He could tell us how it operates and in what respect changes in any law that is in effect may be desired. Now, I could not discuss that subject, but I would like to be a pupil and learn about it.

Another subject is the subject of good roads. We are greatly interested in Iowa in good roads. We are calling a good roads convention in my State and our people are intensely interested in those things. I want to know how you people, in the older states that are building roads, do that thing. I want to know what it costs, and what is the most satisfactory road, and I want to get some information that I can take back to my legislature and say "Do this and do that". I don't want to wait until we can get other states to take action. In other words, we want to be progressive—I mean in the sense of moving things along, advancing. A great many of the older states that are classed as being extremely conservative have enacted legislation far in advance of other states. My good friend from Massachusetts nods his head. I want to say that your State, Governor Draper, has some of the most advanced laws on its statute books of any State in the Union, and we want to know whether they are working satisfactorily so as to know whether to adopt them in Iowa.

Those are things that are of more practical benefit to us than these you have in view of accomplishment in the bringing about of uniformity. My idea is that uniformity only ought to be an incident of the great movement we are joining in here. But at the same time, I will join you in all uniform laws we can enact which will be to the benefit of the States.

Getting back to insurance for a moment, why can we not enact uniform insurance laws? One reason is that laws that might fit the condition in the States where the larger companies exist, would not suit at all in our State. So, we have to proceed with caution. In my State, we have a compulsory deposit insurance law. You perhaps could not handle that with the millions of securities that your companies have.

And yet all the uniform laws you could draw up on that subject would not move ten men in our legislature to vote against our law or wean one company away from it; because they regard it as the mainstay of their existence. But we can benefit from the experience of other States in the things that will apply to our Sate, and I am in hopes when we settle down to business that we can accomplish a great deal in the

way of securing desirable legislation for our different States before we can hope to secure any general uniformity as to the laws.

Governor Shafroth.—I cannot agree with what the Governor of Kentucky has said with relation to the adoption of resolutions, or at least with relation to the adoption of resolutions which would let Congress know what position a body of this kind takes in reference to certain subjects. I believe that we have let the office of Governor dwindle in public importance, because those rights which are thought by the masses to be rights belonging to the States have been more and more asserted by the Federal Government. If you will remember, Secretary Root in a speech not long ago warned the States, that unless they took some aggressive action with relation to matters, that lay within that zone, which could be classified perhaps as belonging to the Federal Government or classified as belonging to the States, that the Federal Government would deem it necessary and proper to take hold of those matters although perhaps it would have to stretch the Constitution in order to do so. Mr. Chairman, on the trip down the Mississippi River we were addressed by the Honorable Speaker of the House of Representatives, and he told the Governors at that time, that unless they undertook to assert their powers with relation to those rights belonging to the state, that Congress would be compelled to take hold of those matters. He warned us that in order to make the office of Governor, and the position of states in the union, that which they should be according to the dual form of government which exists, that we should act, and that we should let our opinions, not only as individuals, but collectively, be understood.

President Taft on that very trip, enunciated the proposition that it was expected that the State officers should undertake in some way to define their rights more clearly with relation to the National Government; and President Taft only yesterday stated to us that he did not invite us to the White House to have our conference this year, because he wanted us to be in an independent position, so we could make declarations on the line of what subjects come within the jurisdiction of the States. Unless we make those assertions, unless we are ready to define them, unless we pass resolutions concern-

ing our rights, I do not see how as a collective body we can assert that dignity which I think the duties and powers of the office of Governor should command.

Governor Weeks.—May I interrupt you with a question?

Governor Shafroth.—Certainly.

Governor Wecks.—You would pass resolutions for what purpose—to go to the press or to go to our legislatures?

Governor Shafroth.—Either one.

Governor Weeks.—Is not that what the Speaker and Secretary said, that we should take the action in order to have its proper effect upon our legislatures, upon the press; but not in reference to Congress?

Governor Shafroth.—I don't know. There is no question but that in regard to these uniform laws, we should submit those drafts to our legislatures. It must be remembered that all powers of government exist in the States except those which have been delegated by the States to the National Government. These are subjects as to which there is in doubt as to whether they come within the powers of the Federal Government or of the States. We hear them discussed in Congress. There is a continual saying that the National Government is exceeding its power in this respect, or that the line of action which is proposed is contrary to the Constitution of the United States. Those things are continually asserted. Then why should we not present our views as to the same subject.

There is another condition that has made the office of Governor, in my judgment, not of that virility, which it seems to me it ought to possess. I was in hopes we would discuss that question during the proceedings of this conference. It has arisen in my judgment by reason of the fact that the Governors of the States, as a general rule, are not clothed with sufficient power—with relation to matters of administration in the state government. For instance in my State, I am made commander in chief of the military forces. I am required by the Constitution to enforce the laws. But there is not a sheriff, or another county officer that is dependent upon me; he can defy me, he can say "I will not enforce those laws". What is the efficiency of my office under those circumstances? The only power I have is to call out the militia to suppress something.

The Chairman.—Haven't you got power to remove the Sheriff?

Governor Shafroth.—No sir.

Governor Willson.—There is'n't one state in five where the Governor has that power.

Governor Shafroth.—And in my judgment that is one of the most important things we should deliberate upon,and we should try to get that power vested in us.

Suppose the law is violated; suppose a saloon keeps open on Sunday, and it is generally known, and the citizens call upon me to enforce the law and close the saloon. I have the power to call out the militia, but calling out the militia to close a saloon on Sunday would be one of the most ridiculous things in the world. And if that were done, it would mean that the Governor would be asked to patrol every county and every city in the entire State.

Of course, as we approach the larger matters, things that are more dignified and of greater consequence, we naturally conclude that we can use a little pressure; but when a complaint is made, as to the violation of a law, all that the Governor can do is to write to the sheriff or write to the District Attorney, and if they are not willing to co-operate with the Governor, or if there is a sentiment locally against the enforcement of the law, and the sheriff and district attorney refuse to act there is nothing the Governor can do.

There ought to be a power of removal in the Governor, as to every county officer. There perhaps ought to be a check upon the Governor, he ought not to have the right to change, for political reasons, an officer of the county; but there ought to be a power of removal subject, perhaps to appeal to the Supreme Court. The Governor should have that power and then when he says "I want the law with reference to a matter enforced in a county" immediately the sheriff will see to it that that law is enforced.

Governor Carroll.—Would not that necessarily constitute the Governor a judicial official?

Governor Shafroth.—No.

Governor Carroll.—How are you going to remove the officer of the county?

Governor Shafroth.—You would have a hearing before the Governor.

Governor Carroll.—I want to bring that out, because I know New York has that prov sion.

Governor Hughes.—I will explain briefly what our position is.

The constitution of New York, while securing home rule to counties and cities and providing that county and municipal officers shall be appointed or elected by the officers or citizens of the community, also provides that sheriffs, county clerks, registers and district attorneys shall be removable by the Governor upon charges after a copy of the charges have been served upon the official and he has been afforded an opportunity of being heard in his defense. In construing that constitutional provisiom, our court of appeals has held that the Governor's decision, assuming that all the jurisdictional conditions have been complied with, is not subject to review in the courts; that he acts by virtue of a high executive prerogative conferred upon him by the constitution.

Unfortunately, I have had several cases in which I have been compelled to exercise a jurisdiction similar to that to which I have referred, conferred by statute with regard to local officers who are declared by the statute to be removable by the Governor in the same manner as sheriffs. There is no department of executive work which is so important, no prerogatives of such serious consequence to the people, as that of the Governor dealing with elected officers in the white light of publicity. His fairness, the importance of the charges, the way in which they are heard, the opportunity to the officer to put in his defense, the propriety of the Governor's action in sustaining or dismissing the charges, are subjects of the most careful and critical comment throughout the state. No court consisting of several judges, dividing among themselves the responsibility of the decision which they reach, can feel the responsibility of the single man, the head of the state, who is trying an elected official, placed in his office by the votes of the citizens of his community, upon charges which are claimed to be serious enough to justify his disgrace and removal from office as unworthy of confidence, and in such a

case I believe the governor who is responsible to all the people, may be trusted.

Governor Carroll.—It really does clothe the governor with judicial power.

Governor Hughes.—Well, what is judicial power is what is held by the courts to be judicial power, I suppose. I sat in one case for weeks taking testimony, and I decided according to the evidence. But under our Constitution my action was not subject to review as I was exercising my executive prerogative. I think the governor should have this power not only over locally elected officers but over appointed officials. In the State of New York the governor appoints administrative heads subject to the advice and consent of the Senate, and those officers are removable only by the Senate. I believe in giving the power of removal of these officers to the governors, at all events if charges are presented and a hearing is afforded.

Governor Carroll.—We had the matter up last winter, and I studied with reasonable diligence the provisions of that law and decided to take another tack. There is power lodged now with some authority to remove every official in our state, from the Governor to the lowest peace officer. Appointive officers, in part, are removable by the Governor because they are subjects of his own creation. In the case of some other officers that are appointed by the Governor, they are removable by a council, which consists of the Governor, the secretary of state, the treasurer and auditor of state; and for county officers and peace officers, generally, they are removable by the judge of the district court, upon complaint signed by five citizens, or upon complaint filed by the attorney-general; or by direction of the Governor. Then an appeal, of course, is allowed, and that is taken from him to the higher courts. While that is a new thing with us, it is working very well.

Governor Burke.—This question we are very much interested in in our state and I am very glad that it has come up at this time.

We have had in our state, for the last twenty years, a prohibition law and like every other law, it is easy to enforce in communities where the sentiment of the people is in favor of the law, and it is a very difficult thing to enforce it in com-

munities where the sentiment of the people is against the enforcement of the law.

In communities where the sentiment of the people is against the law, the sheriffs and the state's attorneys, and those who are charged with the duty of enforcing the law, neglect it because they fear that they will be defeated when they come up for re-election; and the Governor of the state, who is charged with the duty of enforcing the laws of the state under the constitution and under the statutes also, has no power at the present time except to notify the different officers to enforce the law. They can defy him, as the Governor of Colorado has stated.

I made a strong recommendation in my last message for authority to remove officers for neglect or refusal to perform the duties that the statutes require of them.

I made a study of the subject at the time, and I looked up the different states that had laws giving this power to the Governor. Our legislature refused to pass the law, because they said the Governor wanted to be a Czar. Some of them were even mean enough to say that I was worse than the Speaker of the National House of Representatives. (Laughter).

But I believe that it is not giving judicial authority to the Governor at all. Our supreme court has just passed upon a similar question. The last legislative assembly changed our laws for the granting of permits to sell intoxicating liquors in our state. Under the old system, before a person could sell intoxicating liquors in our state for medicinal, sacramental or mechanical purposes, it was necessary for him to petition the judge of the county court, and a notice was then published in the newspapers, that on a certain date the application of the person asking permit would come up for a hearing; and upon that date it was the duty of the county attorney to appear and cross-examine the witnesses, and if upon this hearing the county judge believed the applicant competent and qualified under the law, he granted the permit.

The last legislative assembly amended that law, and it took from the county judge the power to issue this permit and placed it in the hands of the judge of the district court. The county judges in many of the counties of our state are

not lawyers; where they only have jurisdiction over probate matters, they very frequently elect someone who is not a lawyer, and permits were often granted where they should not be. For this reason, this power was taken from the county court and placed upon the judge of the district court.

It was taken to the supreme court upon the theory that it was adding administrative powers to the office of judge, and the court held that while it was an administrative duty and while it was not a judicial function, the legislature had the power under the constitution to pass such legislation and burden the judiciary with such duties.

I see no distinction between the question of granting this power and the question we have been considering here. If the one is an administrative power, the other is an administrative power. It would enable us to enforce the laws of our State if we had the same law that they have in Minnesota and New York.

The Governor would never have to use this power, but it would be a great club that he could bring to bear upon the enforcement of the law.

At the present time, if a Governor says to a sheriff or to a State's attorney, "You must enforce the law in your county," the state's attorney or the sheriff does'n't have to do anything, because he knows that the Governor has no power to remove him. He can bring an action in the district court before a jury to remove, but if the sentiment of the people in that community is against the enforcement of the law, how long would it take the jury to decide that the official is not guilty of any negligence in the performance of his duty?

But if the Governor has this power to remove, all that it will be necessary for him to do is to say to the sheriff and to the state's attorney "You must enforce the laws in your county," then the State's attorney and the sheriff will know that unless they obey, they are subject to removal from office.

Governor Draper.—There is one matter I want to call to the attention of the gentleman. We in Massachusetts do not have this remedy, but we have something that is quite sufficient. We have a special body of state police or district police, as we call them, which are appointed by the Governor, and if we receive any intimation from any town or any other

section of the state of Massachusetts that the local authorities are not attending to their business, the only thing we have to do is to say to the local officers "Attend to your business or we will take it out of your hands and see that it is attended to"; and if necessary, we send our own officers to any section of the State.

Governor Burke.—Mr. Chairman, we tried a plan similar to that in our State. We passed a law providing for a temperance commission whose duty it was to go into those counties where the sheriff and state's attorney were not doing their duty; and the supreme court decided that the law was unconstitutional.

Governor Draper.—I want to say, further, that in the matter of our state constabulary the governor has power to remove.

Governor Burke.—How many constitute that force?

Governor Draper.—I should think we have about sixty-five to seventy state police. If any question arises in any town and the citizens complain to the governor, I send for the authorities if I am sufficiently interested, and instruct them to see that the law is carried out, and if it is not carried out by the local authorities, we take care of it.

My predecessor for instance, took one of the largest cities in the state where they allowed so-called boxing contests, which had degenerated into prize fights. He called the mayor and the city solicitor together and tried to have the evil corrected, but it was not corrected, then he sent these special officers and the fighting was stopped.

Governor Quinby.—Just one word following up the remarks of Governor Shafroth, to show you that some governors do really lack governing power. Within perhaps six weeks, complaint was made by a certain city in my State that the police commissioners were not doing their duty. The Governor and his council, as far as we could learn, had the power—and it was stated in terms—to hear testimony; and if the testimony was sufficient, the Governor had the power to remove the official accordingly. I appointed a day for the hearing of the case. The charges were based upon an affidavit made by a certain witness. The whole machinery of this city was moved down to the Capitol, and the hearing commenced. As it proceeded, at the proper time I inquired where the principal

witness was. They said, when they got ready to come, that he was not available. He had been properly summoned. I told them they could proceed with the hearing but we would have nothing which bore upon his testimony until the witness was produced. Meanwhile, I requested the attorney-general to go to the telephone and call up his man and ask him when he was coming. He succeeded in getting him. The witness said, "I will let you know at 7 o'clock this evening." At 7 o'clock that evening he called up the attorney-general and he said "If you can show me any law whereby I should go to Concord I will come; otherwise, I don't propose to be there." I said, "Gentlemen, this hearing is adjourned until I find whether as Governor of the State of New Hampshire I can compel the attendance of a witness before this tribunal." I adjourned it for three weeks. At the end of that time the attorney-general rendered the opinion that there was no law by which the highest tribunal of the State—perhaps I may call it that—could summon a single witness before it. Every one must come voluntarily or no witness would be present.

I think with you, Governor Shafroth, that the Governor should be clothed with more power.

Governor Curry.—Mr. Chairman, I don't want to propose any resolution and I do not care to speak at length on any subject of these that have been covered so ably by the Governors who have proceeded me. My term of office is about to expire, and I am only the Governor of a Territory appointed by the President and not selected by the people. But before you adjourn, I want to call your attention to one or two little matters affecting the Territories of New Mexico and Arizona, and especially New Mexico.

We have, as you have said, a bill introduced in the House of Representatives, whch has recently passed that body, with only one dissenting vote. It is now pending in the United States Senate. While I do not want to ask you gentlemen to go on record or pass any resolution favoring the admission of our Territories, I do want to call attention to a few facts and to invite your friendly cooperation in the passage of a bill which will give hundreds of thousands of your fellow countrymen right to exercise full American citizenship, a right which they have been deprived of for many years.

New Mexico has about 450,000 population. Two hundred and fifty thousand of this number are Anglo-Saxon, as we are, people born in New Mexico, and in States of the Union who went out into that country. We have a larger population than any territory ever had when it was admitted into the Union, with the exception of Oklahoma.

We read a good deal in the newspapers about laxity of laws, or laxity in the enforcement of laws and about land frauds and other things reflecting somewhat on the citizens of our Territories. New Mexico has had not a bank failure for ten years. We have not had a defaulter in public office in the Territory of New Mexico for ten years. Not only have we bank examiners, but we have traveling auditors who examine, at least every ninety days, the accounts of all officials handling public moneys. The only authority conferred on the Governor to remove a man is in case a man is a defaulter. If the travelling auditor examines the accounts of a man handling public moneys, and finds him to be a defaulter, then, if the defalcation is not made good and everything is satisfactory within thirty days, the Governor can remove him. That is practically the only power of removal the governor has. In every case, though, outside the officials having public moneys in charge, the officers who do not carry out the laws may be removed by the courts on the complaint of a certain number of citizens.

We have a complete system of education; we have a military school; we have a school of mines, and we are paying more money for educational purposes in proportion to our wealth than any other State or Territory in the Union, not excepting Massachusetts.

We have not had a lynching in our Territory for years. We have not had a riot of any kind.

In relation to the Government lands, those that are under the control of the Territorial Administration, for the last five years we have sold less than 3,000 acres of land, and the market price is placed at $1.25 an acre by an Act of Congress. Our Territorial Legislature has placed it at $3.00 an acre, and every acre that has been sold in that time has been sold at $10.00 an acre, in 160 acres lots, to actual settlers.

We are saving our lands. We are doing all we can to pave the way for a proper basis for the State of New Mexico, and we think we are entitled to a little more consideration than we have received from the American people.

I went out to New Mexico as a boy, and have lived there ever since and have never cast a vote. The people in the Philippine Islands have greater rights in the way of franchise than have the people of New Mexico. I think if the situation were correctly understood, the people of this country would use their influence with Congress to see that New Mexico was given statehood; to see that tardy justice was given to the Territories of New Mexico and Arizona—for Arizona deserves statehood as well as New Mexico. Not only have we in New Mexico 250,000 American citizens, but we have from 150,000 to 200,000 citizens of Spanish extraction who have always been loyal to our flag, citizens who during our Civil War came to the aid of the Union. New Mexico sent more soldiers to the Union, in proportion to population, than any State or Territory in the Union. So, I think you owe something to our Territory.

In the treaty between the United States and Mexico, there was a pledge that as soon as they had proper wealth and population, New Mexico would be admitted into the Union.

Now, gentlemen, I am retiring from office. I have listened to what our distinguished Governors have said and have been very much interested in the many subjects that have been discussed so ably, but although retiring from office, of course I have the same interest that other citizens have in the commonwealth they belong to, and I appeal to you gentlemen who are the representatives of the American people, who are among the brainiest and most distinguished men in the country, to use the influence you can in molding public opinion to see that justice is done to your fellow countrymen.

You understand that we have no representation in Congress except a voteless delegate; that is, he cannot vote on any subject. He sits there like the delegate from the Philippine Islands, he cannot vote on anything that comes up. I hope when you return to your homes, or even if you have an opportunity before you return to your homes, that you will talk to your Senators and Representatives and tell them not

to go ahead and defame 400,000 American citizens tell them not to say that they are unfit for citizenship.

Our people have asked Congress, from time to time, to send a committee out to investigate us. If any fair minded committee comes to New Mexico and does not find conditions just as we have stated, then I will not ask for statehood.

I had the pleasure of entertaining over fifty Senators and Representatives in the Philippines, and yet during all the years I have been in New Mexico, I have had the pleasure of entertaining but two members of Congress, and not a single Senator has given me the pleasure of entertaining him in our Territory. I have said to them"If you are going to deny us the rights of citizenship, why don't you learn something about us; why don't you visit us? If you are going to legislate for us you should know something about our conditions. You have no right to say that we are not fit for citizenship when you don't even visit us and learn something about us."

I sincerely hope, that as an American citizen, not a lawyer or an orator but a cowboy from the plains of New Mexico, that you will be able to influence public opinion throughout the country so that we may secure our rights; I hope you will do everything you can to influence your Senators and Representatives in bringing about tardy justice for New Mexico. (Applause.)

Governor Shafroth.—Mr. Chairman, I suppose I have a right to resume, now. The speech that has just been made is one of the clearest illustrations to my mind, of why the Governors ought to assert themselves upon matters by resolutions, and when those resolutions are directed to the Federal Government that they should be bold in saying what they think is right.

The treatment of the Territory of New Mexico as to its admission into the Union I have regarded as one of the greatest outrages ever perpetrated in American history. Their territory was brought into this Union under a treaty, which provided that it should be admitted into the Union as a state at the earliest practicable time. There have been bills introduced in Congress that have passed various Houses almost from the time that the treaty was made, in 1847 to the present

moment. Its population is double, treble, and in many instances quadruple the population of a majority of the States now constituting the Union, at the time of their respective admissions.

I came to Congress, elected in 1894, and one of the first bills introduced was for the admission of the Territory of New Mexico. The bill went through the House a sailing, and I thought New Mexico would have her rights and be admitted to the Union immediately. The bill went over to the Senate, and there it slept and slept and slept. And that course has been continued no matter what political party has been in power. The same thing has happened many times.

It seems to me where all the conditions that were supposed to be prerequisite to the admission of a Territory as a State exist, that the pledge which was given at the time of the taking in of New Mexico as a Territory should be regarded and fulfilled; and it seems to me that the States of this Union ought to undertake to see that a sister Territory should have some little respect given to it by the National Government. I think this is illustrative of the fact that unless we are willing to put ourselves on record, unless we are willing to vote for resolutions, unless we are willing to act in the spirit of attempt to accomplish something, our deliberations will not be of the value which they should be. It seems to me that we ought to prepare at the next conference—it is probably too late to undertake it now—resolutions as to what our beliefs are on important matters, such as this matter that has been presented to us so ably by the Governor of New Mexico.

There are certain interests that we have, that are different, from the interests of the National Government, and although I am loyal to the National Government and I think in national affairs it ought to have every power which is given to it by the Constitution, yet unless we see to it that it shall not encroach on those rights, which are recognized under the Constitution as rights of the States, we will not have that usefulness, we will not take that rank, nor have that relation of the National Government to our States and to the powers of our States, that the Constitution intended we should have.

Governor Weeks.—Mr. Chairman, I think I can say that the program has come up in every particular to what we anticipated it should be at our first meeting. You all know how it was brought about. As Governor Hughes has so ably expressed it, at the next meeting these matters that the Governor of Colorado and others have pleaded for here, will undoubtedly be given consideration in even a more substantial way than has been done at this meeting, if there is any way we can do so. I think, myself, that we should go very carefully about adopting resolutions. If I should vote for some resolution affecting Colorado and then go home, my people would say to me, "What do you know about Colorado?" Of course, I know nothing about Colorado except the general law in question, and what the gentleman tells me.

Governor Burke who spoke a few moments ago referred to Speaker Cannon as well as the President, and also Secretary Root; and that special reference was made to something that was said when we were going down the Mississippi River. As I understood what Speaker Cannon said, it was not suggesting that we as a body should advise Congress what to do but simply that we should advise our legislatures.

One thing more, and I will be through. There is no doubt that the gentleman's speech will get to the Congressmen, and while it will not get to them in the way he perhaps intended it should, still, the Congressmen will undoubtedly understand it.

Governor Fort.—I perhaps ought not to take any more time, but this discussion of the power of removal is very close to my heart.

In my State, there is no power whatever resting in the Governor to remove an officer appointed under statutory provision; nor even power to remove a member of a board created by the statute. The Legislature only has power to remove a constitutional officer by impeachment. I tried to bring the matter to the legislature, as well as I was able to express it, and last year I stated in my message which States in the Union had given the Governor the power of removal, and named those States; and this year I followed that up by calling attention again to the same subject, and along the line

especially that Governor Burke has spoken of; for they are very important questions just now in my State. There is no power in the State of New Jersey,resting in the Governor, to enforce laws except by calling out the militia. And there is no power to call out the militia in my State except in case of insurrection. Of course there is no case of insurrection where a man keeps his saloon open on Sunday contrary to the law.

I am very glad the discussion has taken place. I propose to have a transcript of the three speeches made and I will take great pleasure in transmitting them to the legislature. Those speeches are along the lines that I believe; and believe most earnestly. If there is anything that militates against the power of the State and of the Governor, it is the lack of proper power and authority on the part of the Governor to enforce the laws of the State. It is humiliating to a Governor to have the citizens of a community come to him by the hundreds, as I have had them, and petition him to enforce the laws in a county and have no power to say a word to the prosecuting officer, the mayor or anybody else that will be effective in having law enforced.

It breaks down the executive power in the state, it seems to me, to have such a condition exist under any circumstances. I have said to the legislature this year, "If you don't want to give that power to the Governor, then give it to the courts, put it in the supreme court, put in anywhere you please; only place the power somewhere."

Just a word as to the program, because I, in a sense, have probably had more responsibility in regard to it than anyone else. Governor Hughes, Governor Weeks and I met in order to arrange this program, and I did the writing to the Governors, asking them to present certain papers. Many of them declined to prepare the papers they were asked to. I first asked Governor Carroll to write on municipal charters, and I asked Governor Campbell of Texas to write a paper on the same subject; in order that we might get the Galveston subject before us and the Des Moines matter before us. Governor Carroll wrote me or telegraphed me that he did'n't care to do that. Then I gathered him up for the subject of divorce, without consulting my brethern, doing it at the last

minute. I had only about four weeks to get in communication with all of these Governors and arrange matters.

I want to say for myself, whatever may be said for the rest of you, excluding my own paper, that I have been entertained, instructed and educated by these papers. This has been a great conference to me. I shall go back to my State and my people after these discussions, feeling that behind this meeting of Governors there really exists some concensus of opinion and power, in all the Governors of the States. It is helpful, it is educational. I do not care whether you pass resolutions or not. I would be delighted to have you pass a resolution that every Governor is in favor of having the power of removal placed in the Governor in order to enable him to enforce the laws of his State; but whether you do that or not, I can tell my people what the sentiment of this convention was in reference to that, in a message to the legislature, and in my State, and in many States, that will have almost as much influence as a resolution—because a resolution would necessarily be criticised. Of course, at home we have a right to say what we choose, within our constitutional rights.

So, let us go forth from this meeting armed with greater strength to do our duty as we see it, and as we see it being done by one another; and when we shall come together next December, let us get a better program than we had this time. Then let us go on, and, if necessary, adopt resolutions on the subjects which may then be before us and which we may deem it wise to pass.

This conference was really called rather informally. It was suggested at the White House when we had the last conference, just at the close of that meeting. I remember that I had left the meeting and Governor Hughes had left, and I do not really know who were on the committee, but they conferred together and we are here legally as a result of what they did. Now we have appointed a committee and we shall have a regular, formal, and I hope a better, conference in November next than we have had this time. When we come together again and separate, some will be there for the last time as Governors—because in my State a Governor cannot be re-elected. Nevertheless, I shall go back home after the next conference, prepared to send my last message to the legislature founded

on principles that I know are deep and abiding in the judgment of all the Governors of the States.

Gentlemen, this has been a delightful conference, especially from the results we have had in the way of education and the way of improvement of our state-craft. We have had a most genial time as men. And now, when I write to either of you I shall know Governor Carroll and Governor Shallenberger and Governor Brady, and a letter will come in reply to mine, not only of an official character but with the splendid friendship that comes where men meet, man to man.

Governor Burke.—Because of the lateness of the hour, I will simply touch upon the subject that I made a few remarks upon a while ago. I want to simply say that that is one of the most important subjects that we have to deal with as Governors. I have not said anything very much at this convention, but I want to say that at the next meeting I would like to speak of "the power that the governor has and the power that he ought to have".

Governor Shallenberger.—I precipitated this little discussion as to the program for the next convention, and for fear that my observations might have led some to think that I was not delighted with the conference we have had, I wish to say to you that I only offered these remarks, hoping that they would develop a discussion; the discussion that has taken place.

I am sure the Governor of New Jersey has voiced the opinion of all of us, and since I was the starter of the discussion which has raised some questions as to the program of the future, I wish to offer here the thanks of all the Governors to the committee who prepared the splendid program that we have listened to at this conference, and to extend to them the thanks of all for the splendid manner in which they have carried out the work accomplished at that meeting.

The motion was seconded, and the question being taken, it was unanimously agreed to.

The Chairman.—I want to say before we close that some of the Governors present who are very anxious to have this power extended to them will find it a little different when they get it, and perhaps they will wish they did not have it. I have a case pending that I expect will take at least a month of my

time. The county board of one of the counties of my State made a complaint in writing to remove the registrar of deeds, and he proposes to put his record in evidence. You know what that means. We have power to remove an officer in Wisconsin, and the power was extended considerably a couple of years ago. We have power to remove county officers, district attorneys and sheriffs.

When I went into office in Wisconsin as Governor, slot machines were used all over the State, and I did not have to remove only one in order to clean out the slot machines, but a great many. The sheriffs were very anxious to do the work, and they did it right along.

I have authority not only to remove but, in my discretion as Governor, if charges are made against the district attorney or the sheriff of a county, I have the authority to suspend that official, pending a hearing, and I think that should go with the removal power. I presume, Governor Hughes, that you have the same law.

Governor Hughes.—Not except in one or two minor cases.

The Chairman.—I believe if he had the authority of removal, he should also have the authority to suspend the official pending the investigation. I think that is a good law. At least, it has worked very well in our State. Last year I had occasion to hold several hearings in regard to district attorneys, where charges were made, and I suspended the district attorney pending the hearing, and put another man in his position, enabling me to enforce the law.

I know it is a great responsibility upon the Governor of the State, but as it has already been said here this afternoon, I believe it is the only way by which the Governor of the State can compel the enforcement of the laws by the sheriff and district attorney.

Is there anything further, gentlemen?

Governor Fort.—It has been suggested, as we sat around here, and I think with great propriety, that we should express ourselves by rising as to our appreciation of the very great courtesy and the delightful entertainment which the Chief Executive of the United States has tendered us during our session.

The motion was numerously seconded and the question being taken, was unanimously agreed to.

Governor Willson.—Mr. Chairman, just one other matter, I don't wish to intrude upon the patience of the conference, but there is one gentleman who has given a great deal of thought, in a very modest way, to the Governor's meeting, to try to lend one element of useful influence to the affairs of the country. I refer to Mr. Jordan, who is here.

As we do not pass resolutions about any one, I will simply say a few words in regard to him. Mr. Jordan is perhaps the first man who has brought out the idea of a meeting of the Governors. He wrote to the President before Mr. Roosevelt invited the Governors to come to Washington for their first conference. I think the universal feeling was that we did not wish to adopt the term "House of Governors" or to treat this as an official body. But I desire to express in this way the appreciation of a great deal of patriotic and useful thought to this gentleman who is not a Governor, which he has given to this subject. He is a very modest man, but I really think that every one of us is considerably indebted to him for what he has done. While I am strongly against the "House of Governors" or the "House of Burgessess", I do think he had a useful idea and ideas run the world, and that idea has brought us together. Therefore, I am very glad to make this little tribute to his work. (Applause.)

Governor Weeks.—Mr. Chairman, I think a vote of thanks is due to the New Williard Hotel Company for tendering us the use of this room, and I make such a motion.

The motion was seconded and the question being taken, it was unanimously agreed to.

Governor Carroll.—I want to say, on behalf of Governor Hadley, that he instructed me to say to you, last night, that he is willing to bear his share of the burden in the matter of expense.

The Chairman.—I think it is a good plan not to call on the Governors just now to contribute anything to the expense. (Laughter).

Governor Willson.—One word more which I would like to mention for the good of the Secretary. I have had several gentlemen ask me if we would place our report on sale. Some people will want to buy copies of our proceedings, and we can make a memorandum and have copies enough printed so that some may be sold.

Thereupon, at 6 o'clock, p. m., on motion of Governor Shafroth, of Colorado, duly seconded, the meeting of Governors adjourned sine die.

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